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Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

NOS. 06-730, 06-713

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE GRANGE,

Petitioner,

v.

WASHINGTON STATE REPUBLICAN PARTY, ET AL.,

Respondents.

STATE OF WASHINGTON; ROB MCKENNA, ATTORNEY GENERAL; SAM REED, SECRETARY OF STATE,

Petitioners,

v.

WASHINGTON STATE REPUBLICAN PARTY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX VOLUME I OF III

ROBERT M. MCKENNA
Attorney General
James K. Pharris*
Deputy Solicitor General
**Counsel of Record*

1125 Washington Street SE
Olympia, WA 98504-0100
360-664-3027

Petition For Writ Of Certiorari Filed Nov. 20, 2006
Certiorari Granted Feb. 26, 2007

Thomas Ahearne
Foster Pepper & Shefelman PLLC
1111 3rd Avenue Suite 3400
Seattle, WA 98101-3299
(206) 447-4400
Counsel for Petitioner Washington State Grange

John White*
Kevin Hansen
Livengood Fitzgerald & Alskog
121 3rd Avenue
Kirkland, WA 98083-0908
(425) 822-9281
Counsel for Respondent Washington State Republican Party
Counsel of Record

David McDonald*
Jay Carlson
Alex Wagner
Kirkpatrick & Lockhart Preston Gates Ellis LLP
925 4th Avenue Suite 2900
Seattle, WA 98104-1158
(206) 623-7580
Counsel for Respondent Washington State Democratic Central Committee
Counsel of Record

Richard Shepard
Shepard Law Office PLLC
818 S Yakima Avenue Suite 200
Tacoma, WA 98405-4865
(253) 383-2235
Counsel for Respondent Libertarian Party

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Washington State Republican Party v. Washington, 460 F.3d 1108 (9th Cir. 2006) 1a

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Order Consolidating Appeals (11-08-05) 103a

Order on Attorney's Fees (8-22-06) 106a

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition For Certiorari of the State of Washington, Docket No. 06-713:

Washington State Republican Party v. Washington, 460 F.3d 1108 (9th Cir. 2006) 1a

Washington State Republican Party v. Logan 377 F. Supp. 2d 907 (W.D. Wash. 2005) 35a

Permanent Injunction (7-29-05)..... 93a

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

(No. 05-35774) (Appeal of Washington State Grange)

(No. 05-35780) (Appeal of State of Washington)

(NOTE: The dockets for these two appeals are identical except where noted below)

August 4, 2005 Docketed Cause and Entered Appearances of Counsel

August 4, 2005 Civil Appeals Docketing Statement

August 5, 2005 Case rejected from Circuit Mediation Program

August 9, 2005 Appellant's Notice of Designation of Reporter's Transcript

August 11, 2005 Appellees' Response to Motion to Expedite Review (No. 05-35774 only)

August 11, 2005 Appellants' Notice of Designation of Reporter's Transcript (entire transcript ordered)

August 12, 2005 Appellee State Republican Party's Joinder of Opposition to Motion to Expedite Review (No. 05-35774 only)

August 17, 2005 Appellant Washington State Grange's Reply to Response Supporting Motion to Expedite Appeal (No. 05-35774 only)

August 17, 2005 Appellees' Response Opposing Motion to Expedite Review (No. 05-35774 only)

August 18, 2005 Appellants' Joint Reply Supporting Motion to Expedite Review

August 19, 2005 Order Granting in Part and Denying in Part Motion to Expedite Review

August 25, 2005 Appellee Democratic Central Committee's Motion to Extend Time to File Brief

August 31, 2005 Order Granting Democratic Central Committee's Motion to Extend Time

September 19, 2005 Appellant Washington State Grange Opening Brief filed (No. 05-35774)

September 19, 2005 Appellant State of Washington's Opening Brief filed (No. 05-37580)

October 18, 2005 Appellee Washington State Republican Party Brief filed (No. 05-37580)

October 19, 2005 Appellee Washington State Republican Party Brief filed (No. 05-37574)

October 19, 2005 Appellee Libertarian Party of Washington Brief filed

October 26, 2005 Appellee State Democratic Central Committee Brief filed

October 26, 2005 Amicus FairVote's Motion and Brief filed

October 31, 2005 Appellant Washington State Grange's Response Opposing FairVote's Motion for Amicus Status (No. 05-37574)

October 31, 2005 Appellant State of Washington's Response Opposing FairVote's Motion for Amicus Status

October 31, 2005 Appellee Washington State Republican Party's Response Opposing FairVote's Motion for Amicus Status

November 1, 2005 Appellee Washington State Democratic Committee's Joinder in Appellee Republican Party's Response Opposing FairVote's Motion for Amicus Status

November 7, 2005 FairVote's Reply to Responses

November 8, 2005 Order Consolidating Appeals of Washington State Grange and State of Washington, Granting Appellee Washington State Democratic Party's Motion for Extension of Time, and Referring FairVote's Motion to the Merits Panel

November 8, 2005 Appellee Washington State Democratic Committee's Brief

November 8, 2005 Appellant Washington State Grange's Reply Brief

November 8, 2005 Appellant State of Washington's Reply Brief

December 21, 2005 Argument Calendared for Feb. 6. 2006

January 10, 2006 FairVote's Additional Brief

February 6, 2006 Argued and Submitted to Dorothy W. NELSON, Pamela A. RYMER, and Raymond C. FISHER

August 22, 2006 Order Granting Leave to FairVote to File Amicus Brief

August 22, 2006 Order on Merits Affirming U. S. District Court

September 13, 2006 Mandate Issued and Costs Taxed

October 3, 2006 Agreed Order on Attorneys' Fees

November 27, 2006 Notice from Supreme Court: Washington State Grange Petition for Certiorari Filed on 11/20/06

December 1, 2006 Notice from Supreme Court: State of Washington Petition for Certiorari Filed on 11/20/06

March 1, 2007 Notice from Supreme Court: Petitions for Certiorari Granted on 2/26/07

UNITED DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

(No. 2:05-cv-00927-TSZ)

May 19, 2005 Complaint for Declaratory Judgment and for Injunctive Relief Regarding

Initiative 872 and Primary Elections [Doc. #1]

May 19, 2005 Motion to Intervene by Intervenor Plaintiffs Washington State Democratic Central Committee [Doc. #2]

May 19, 2005 Motion to Intervene by Intervenor Plaintiffs Libertarian Party of Washington State [Doc. #3]

May 26, 2005 Motion for Preliminary Injunction by Plaintiff Washington State Republican Party [Doc. #7]

May 26, 2005 Declaration of John J. White, Jr. re Motion for Preliminary Injunction [Doc. #8]

May 27, 2005 Minute Order by Judge Thomas S. Zilly scheduling status conference [Doc #11]

June 2, 2005 Motion to Intervene of State of Washington, Rob McKenna, and Sam Reed [Doc. #22]

June 2, 2005 Answer of State of Washington Intervenor Defendants [Doc. #23]

June 7, 2005 Complaint of Intervenor Plaintiff Libertarian Party of Washington State [Doc. #28]

June 7, 2005 Order Granting Motion to Intervene of Democratic Central Committee [Doc. #29]

June 7, 2005 Order Granting Motion to Intervene of State of Washington et al. [Doc. #30]

June 7, 2005 Minute Entry re: Status Conference held on 6/7/05; Granting Motions to Intervene by State of Washington, Democratic Central Committee, Libertarian Party, and Washington State Grange; Adopting Briefing Schedule; Requesting Joint Statement of Issues; Continuing Motion for Preliminary Injunction [Doc. #45]

June 8, 2005 Order Granting Motion to Intervene of Libertarian Party [Doc. #27]

June 8, 2005 Complaint of Intervenor Plaintiff Democratic Central Committee [Doc. #31]

June 8, 2005 Request of Washington State Grange for Entry of Order Granting Intervention [Doc. #33]

June 10, 2005 Answer of Intervenor Defendant Washington State Grange [Doc. #37]

June 10, 2005 Attachments to Answer of Intervenor Defendant Washington State Grange [Doc. #38]

June 10, 2005 Stipulation Statement of Legal Issues [Doc. #40]

June 14, 2005 Order Regarding Initial Disclosures, Joint Status Report and Early Settlement [Doc. #44]

June 15, 2005 Answer of Defendant Donna M. Eldridge, Jefferson County Auditor [Doc. #47]

caucuses and conventions adopted by the Republican State Committee of Washington.

Rule 9 Demonstration of Significant Support: Legislative Districts. A candidate for Washington state legislature demonstrates significant Republican support by obtaining the vote of 25% or more of the delegates to county conventions from precincts within the Legislative District. Votes shall be tallied at each county convention (or, if provided for by the rules of the county, at legislative district caucuses called by the respective county), such nominating conventions or caucuses held not earlier than the first day of April and not later than the last date set for the holding of county conventions in accordance with the rules for caucuses and conventions adopted by the Republican State Committee of Washington. The results from each county shall be reported to the Secretary, the Republican State Committee of Washington, within three days after the convention has adjourned.

Rule 10. Demonstration of Significant Support: County Districted Offices. A candidate for a county partisan office comprising less than the entire county (County Council and County Commissioners who are nominated by less than the entire county demonstrates significant Republican support by obtaining the vote of 25% or more of the delegates to a Republican county nominating convention from precincts within the district the candidate seeks to represent, such nominating conventions (or district caucus if provided for under the rules of the county) shall be held not earlier than the first day of April and not later than the last date set for the holding of county conventions in

accordance with the rules for caucuses and conventions adopted by the Republican State Committee of Washington.

Rule 11: Provision When No Candidate Demonstrates Significant Support. If no candidate demonstrates the requisite support level, then the three candidates receiving the most votes shall be certified to the primary ballot.

Rule 12. Partisan elections in Odd-Numbered Years. Counties holding partisan elections in odd-numbered years shall hold precinct caucuses on the second Tuesday of March and shall thereafter hold district and/or county nominating conventions pursuant to the foregoing rules and to the rules of procedure for conducting precinct caucuses and county conventions adopted by the Republican State Committee to govern the preceding even-numbered year.

Rule 13. Special Elections: County or Legislative Offices. In any special election called to complete an unfilled term of office, the Republican nominating convention shall consist of the Precinct Committee Officers elected or appointed at least sixty days before the holding of the convention. The convention shall be held not later than the Sunday before filing for office commences. Candidates demonstrate significant support by obtaining the vote of 25% or more of the delegates to the convention.

Rule 14. Special Elections, Statewide Office. In any special election called to complete an unfilled term of office for any statewide office, if the notice of special election is called more than sixty

days prior to the holding of a regularly scheduled state Republican convention, said convention shall serve as the nominating convention. In all other cases, the Republican State Committee shall serve as the Republican nominating convention. Each state committeeman, state committeewoman and county chairman shall be entitled to cast as many votes as the county he or she represents was allocated at the last Republican state convention. Candidates demonstrate significant support by obtaining the vote of 25% or more of the votes cast.

Rule 15. Alternative Demonstration of Support by Petition. Alternatively, if the state of Washington shall have established a system of voter registration in which voters may register as a member of the Republican Party and shall have provided for a system of validating nominating petitions, in any race where an incumbent has not received more than 66% of the vote in a nominating convention, a candidate may demonstrate significant Republican support by filing, with the declaration of candidacy a Nominating Petition signed by 5% of the Registered Republicans in the constituency that the candidate seeks to represent.

In the absence of a system of party registration and of petition signature validation, a candidate may demonstrate significant Republican support by filing, not less than one week before the close of filing for office, a Nominating Petition signed by 5% of the Republican Vote in the constituency in the last Quadrennial Election. "Republican Vote" shall mean the total vote in the precincts within the constituency for the offices of President, Vice President, Attorney General and the two positions of

the State House of Representative, divided by five. The Petition shall be filed with the County Central Committee for all offices where filing for office is with the County Auditor and with the State committee for all offices where the filing for office is with the Secretary of State. The Nominating Petition shall be in a form prescribed by the State Chairman and shall include a statement that the individual considers him/herself to be a Republican and will not participate in the caucus system nor sign a nominating petition for any other party during the current year, and that the signer understands that the nominating petition shall be filed with the Republican Party and may be publicly inspected. The Party Committee with which the petition is filed shall have the responsibility of validating the signatures and certifying that the candidate has demonstrated significant Republican support.

PART THREE: Nomination in the Absence of a Valid Primary.

[NOTE: This set of rules is designed to provide for nomination of Republican candidates in the event that the court does not impose a party primary. If the "winnowing election" established by Initiate 872 remains in effect, actions under this rule will determine which Republican would appear on the "qualifying election" ballot in September.]

Rule 16. Nomination in the Absence of qualifying Primary. In the absence of a primary election complying with Rule 1, Republican Party nominees will be selected in accordance with this Part Three.

Rule 17. Nominating Convention for years commencing in the Year 2005. Beginning in the year 2005, for any regularly scheduled election the candidates of the Republican Party shall be nominated by convention convened pursuant to these rules.

Such nominating convention shall select the party's nominee and shall be held not later than the Saturday preceding the first day candidates may file for election.

Delegates eligible to vote in the convention, or as appropriate in the caucus, shall be delegates residing in the district or constituency which the elected official shall represent. In Code Counties, candidates for county commissioner shall be nominated by delegates residing in the district which the commissioner seeks to represent.

Rule 18 Nominating by Precinct Committee Officers for special elections.[1]

In the event of any special election in an odd-numbered year as a result of a vacancy due to death or resignation the Republican nominating convention shall consist of the Precinct Committee Officers

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[1] Where the vacancy in office results from the resignation of a Republican elected official two separate actions are required by the Republican Party. Operating under the state constitution and other provisions, the party must submit a list of three names from which the County Commissioners must make the choice of a person to fill the office until the next election. Under these rules, the Party nominates its candidate to run at the next election. While they may be the same individual, they need not be. The two separate actions could be conducted at one meeting, depending on timing.

elected or appointed at least sixty days before the holding of the convention. In any even-numbered year in which the vacancy occurs not later than 15 days before the regularly scheduled county or state convention, the convention shall nominate. If the vacancy occurs subsequent to that date, the nominating convention shall consist of the Precinct Committee Officers elected or appointed at least sixty days before the holding of the convention. Said convention shall be held not later than the Saturday preceding the first day candidates may file for election. Provided, that in the event of a vacancy occurring subsequent to July 15 of any year, the state committee shall serve as the nominating convention, or in the case of offices voted on solely by voters on one county, the county central committee of that county.

Rule 19. Nominating Conventions in Odd-Numbered Years [King and Snohomish in 2005]. For nomination for any regularly scheduled office for county commission or county council, other county office or any other partisan office, the chairman of the Republican County Central Committee shall cause a nominating convention to be convened.

The county chairman of the county involved shall convene precinct caucuses to select delegates to the nominating convention. The caucuses shall be conducted, insofar as possible, in accordance with the Rules Governing County Caucuses adopted by the Republican State Committee of Washington to govern in the prior even-numbered year, provided that the date for the precinct caucus shall be set by the county central committee.

Rule 20. Nominating Conventions in even-numbered years. For regularly scheduled elections to be held in any even-numbered year commencing with the year 2006, any nominating convention shall be the county or state convention called pursuant to the Rules for Precinct Caucuses and County Conventions adopted by the Republican State Committee of Washington.

Rule 21. Majority Vote Required. The nominee of the Republican Party shall be the candidate who receives a majority vote. If no candidate receives a majority of the first ballot, the candidate receiving the least number of votes shall be dropped from each successive ballot until a candidate receives a majority. In the event of a tie in determining which candidate shall be dropped, the candidate shall be chosen by lot.

PART FOUR General Rules.

The following rules shall apply to conventions held under either Part Two or Part Three of these rules.

Rule 22. Rules for Balloting. Each candidate or the candidate's representative shall be entitled to address the caucus or convention for not less than two minutes, or longer if provided for under rules adopted to govern the convention. Each delegate shall vote by ballot for one candidate for each office for which nominations are sought. The results shall be tallied and reported to the chairman of the convention and, within three days after the adjournment of the convention, to the Secretary of the Republican State Committee of Washington. The convention or caucus may dispense with balloting for

any office in which a single candidate is seeking nomination.

Rule 23. Weighting votes in Multi-County Districts. The standard minimum allocation of delegates to precincts under existing state rules for precinct caucuses is two delegates per precinct on average (see rules for caucuses and conventions adopted by the Republican State Committee of Washington). Some counties elect to allocate more delegates in order to increase participation at the grass roots level. In order to assure appropriate weighting between delegate votes in multi-county Legislative or Congressional districts, the delegate vote reported under Rules 7 and 9 for multi-county districts shall be adjusted as follows: Multiply by two and divide by the average number of delegates allocated to each precinct in allocation of delegates.

> Example: Smith County and Jones County make up the 50th Legislative District and each are identical in population. Smith County has allocated an average of 2 delegates per precinct to its precincts for purposes of the nominating convention. Jones County has allocated an average of 4 delegates per precinct. The vote tally in Smith County is 120 votes for candidate A and 30 for Candidates B. The vote tally in Jones county is 212 votes for Candidate A and 88 votes for Candidate B. While the "raw vote" would give Candidate B 118 votes out of 450, or over 25%, that is a result of the larger allocation of votes in Jones County. Adjusting by the formula, the raw votes in Smith County would remain the same (multiplied by 2 and divided by 2),

but the votes in Jones County would be divided in half (multiplied by 2 and divided by 4). The result would be that Candidate A has 226 votes and Candidate B has 74. Since 74 is less than 25% of 300, Candidate B would not be certified for the primary ballot in a convention held under Part Two. (In this example, of course, Candidate A would have a majority and would be the nominee in a convention held under Part Three.)

Rule 24 Provision for Convention Recess. If a convention determines that it is not prepared to nominate or certify a candidate or candidates for one or more offices, the convention may recess to a date certain, not later than the Saturday before the commencement of the period for candidate filing, or may recess to a call of the chair. In the event the convention recesses to the call of the chair, any reconvened convention must be held not later than the Saturday before the commencement of the period for candidate filing and the call of the reconvened notice must be mailed not later than ten days before the date upon which the convention reconvenes.

Rule 25: Provision for Reconvening Convention. In the event of a vacancy on the Republican ballot or a substantial change in the nature of the primary by virtue of the death, disability, or announced withdrawal or resignation of a candidate, the county chairman (in the case of an office wholly within the boundary of a single county) or the state chairman (in the case of a multi county legislative office) may convene the members of the county central committee or committees residing within the relevant jurisdiction, shall convene to

serve as the convention. In the event the vacancy involves a Congressional or statewide office, the state Committee shall serve as the default nominating convention. Each state committeeman, state committeewoman and county chairman shall be entitled to cast as many votes as the county he or she represents was allocated at the last Republican state convention.

Rule 26: Authority to Fill Ballot Vacancies. Should a place on the ticket of the Republican Party be vacant because no person has filed for nomination as the candidate of that major political party, (whether or not a candidate has been certified pursuant to these rules) and if the vacancy is for a state or county office to be voted on solely by the electors of a single county the county central committee may select and certify a candidate to fill the vacancy; if the vacancy is for any other office the state committee may select and certify a candidate to fill the vacancy.

Rule 27 Certification. For offices voted on solely by voters from one county, The chairman of the county central committee shall certify the results to the County Auditor, or other official serving as chief elections officer for the county no later than the first day for filing for office .For offices voted on by voters from more than one county, the chairman of the Republican State Committee of Washington shall certify the results to the Secretary of State no later than the first day for filing for office.

Rule 28. Action in Default of County Convention. In the event that any county shall fail to hold a nominating convention pursuant to these

rules, the responsibility for selecting the nominee of the Republican Party shall be that of the Republican State Committee of Washington.

Rule 29 Convention Contests. In the event that the results of any convention held under these rules shall be challenged, the Republican State Committee of Washington shall be the sole judge of such contest and the determination of the Republication State Committee of Washington as to whom the nominee of the Republican Party is shall be final.

Rule 30 Authority to Use Name Republican. Only candidates who shall have been certified or nominated pursuant to these rules shall be entitled to designate themselves as Republican candidates or to appear on the election ballot or in other election documents using the designation "Republican" or other words identifying themselves as Republicans

PART FIVE : Authority of State Committee and Executive Board.

Rule 31 Authority to Amend Rules. In the event of the rendering of any court decision which affects the conduct of nominations, the state committee shall reserve the right to amend these rules to conform to, or take advantage of, such court decision. In the interval between state committee meetings, such power is held by the Executive Board.

EXHIBIT 8

[letterhead omitted]

May 17, 2005

John J. White, Jr.
Livengood, Fitzgerald & Alskog, PLLC
121 Third Avenue
Post Office Box 908
Kirkland, WA 98083-0908

RE: Nomination of Republican Candidates in 2005

Dear Mr. White:

This is in response to your letter of April 19, 2005 in which you asserted an expectation on the part of the Republican State Committee that Spokane County "respect the Republican Party's selection of its nominee" for partisan offices that will appear on the 2005 primary ballot. As you indicate in your letter, details of the implementation of Initiative 872 – or the Top Two Primary – are not yet formally established, so I may be unable to answer your questions completely at this time.

From communications with the Office of the Secretary of State, it is my understanding that Secretary Reed is in the process of promulgating administrative rules implementing the initiative. Further, it is my understanding that the language in the initiative is interpreted by the State as repealing the existing Montana-style primary and the State intends to administer the 2005 primary under the language adopted in the initiative.

The Spokane County Auditor's Office will be guided by the text of the initiative and the administrative rules adopted by the Secretary of State in making

determinations regarding placement of candidates' names on the 2005 primary ballot. I appreciate you providing my office with a copy of the "Rules for the Nomination of Republican Candidates". We will keep your rules on file as a reference in the event they are germane to the implementation of the new primary. At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary.

I hope this information is of use to you. If you have additional questions feel free to contact me.

Sincerely,

Vicky M. Dalton

Vicky M. Dalton, CPA
Auditor

cc: Hon. Sam Reed, Secretary of State

Nick Handy, State Elections Director, Office of the Secretary of State

Steven Kinn, Deputy Prosecuting Attorney, Spokane County

[letterhead omitted]

May 16, 2005

John J. White, Jr.
Livengood, Fitzgerald & Alskog, PLLC
121 Third Avenue
Post Office Box 908
Kirkland, WA 98083-0908

RE: Nomination of Republican Candidates in 2005

Dear Mr. White:

This responds to your letter of April 19, 2005 in which you asserted an expectation on the part of the Republican State Committee that Clark County will "respect the Republican Party's selection of its nominee" for partisan offices that will appear on the 2005 primary ballot. As you indicate in your letter, details for the implementation of Initiative 872 – or the Top Two Primary – are not yet formally established, so I may be unable to answer your questions completely at this time.

I have been in contact with the office of the Secretary of State and it is my understanding that Secretary Reed is in the process of promulgating administrative rules implementing the Initiative. Further, it is my understanding that the language in the initiative is interpreted by the state as repealing the existing Montana-style primary and the state intends to administer the 2005 primary under the language adopted in the Initiative.

Clark County Elections will be guided by the text of the initiative and the administrative rules adopted by the Secretary of State in making determinations

regarding placement of candidates' names on the 2005 primary ballot. I appreciate you providing my office with a copy of the "Rules for the Nomination of Republican Candidates". We will keep your rules on file as a reference in the event they are germane to the implementation of the new primary. At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary.

I hope this information is of use to you. I have copied the Secretary of State on my reply so that his office can provide notice to you and your client when administrative rules are filed and adopted.

Sincerely,

Greg Kimsey

Greg Kimsey
Clark County Auditor

cc: Hon. Sam Reed, Secretary of State

Nick Handy, State Elections Director, Office of the Secretary of State

Curt Wyrick Chief. Deputy Prosecuting Attorney, Office of the Clark County Prosecuting Attorney

[letterhead omitted]

May 13, 2005

John J. White, Jr.
Livengood, Fitzgerald & Alskog, PLLC
121 Third Avenue
Post Office Box 908
Kirkland, WA 98083-0908

RE: Nomination of Republican Candidates in 2005

Dear Mr. White:

This responds to your letter of May 6, 2005 in which you asserted an expectation on the part of the Republican State Committee that Snohomish County "respect the Republican Party's selection of its nominee" for partisan offices that will appear on the 2005 primary ballot. As you indicate in your letter, details of the implementation of Initiative 872 – or the Top Two Primary – are not yet formally established, so I may be unable to answer your questions completely at this time.

I have been in contact with the office of the Secretary of State and it is my understanding that Secretary Reed is in process of promulgating administrative rules implementing the Initiative. Further, it is my understanding that the language in the initiative is interpreted by the state as repealing the existing Montana-style primary and the state intends to administer the 2005 primary under the language adopted in the Initiative.

The Snohomish County Auditor's office will be guided by the text of the initiative and the administrative rules adopted by the Secretary of

State in making determinations regarding placement of candidates' names on the 2005 primary ballot. I appreciate you providing my office with a copy of the "Rules for the Nomination of Republican Candidates". We will keep your rules on file as a reference in the event they are germane to the implementation of the new primary. At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary.

I hope this information is of use to you. I have copied the Secretary of State on my reply so that his office can provide notice to you and your client when administrative rules are filed and adopted. As further information becomes available regarding the implementation of this new primary in Snohomish County, I will make every effort to keep you informed.

Sincerely,

Bob Terwilliger

Bob Terwilliger
Snohomish County Auditor

cc: Hon. Sam Reed, Secretary of State

Nick Handy, State Elections Director, Office of the Secretary of State

Gordon Sivley, Deputy Prosecuting Attorney, Snohomish County Prosecutor's Office

[letterhead omitted]

April 27, 2005

John J. White, Jr.
Livengood, Fitzgerald & Alskog, PLLC
121 Third Avenue
Post Office Box 908
Kirkland, WA 98083-0908

RE: Nomination of Republican Candidates in 2005

Dear Mr. White:

This responds to your letter of April 19, 2005 in which you asserted an expectation on the part of the Republican State Committee that King County "respect the Republican Party's selection of its nominee" for partisan offices that will appear on the 2005 primary ballot. As you indicate in your letter, details of the implementation of Initiative 872 – or the Top Two Primary – are not yet formally established, so I may be unable to answer your questions completely at this time.

I have been in contact with the office of the Secretary of State and it is my understanding that Secretary Reed is in the process of promulgating administrative rules implementing the Initiative. Further, it is my understanding that the language in the Initiative is interpreted by the state as repealing the existing Montana-style primary, and the state intends to administer the 2005 primary under the language adopted in the initiative.

King County Elections will be guided by the text of the Initiative and the administrative rules adopted by the Secretary of State in making determinations

regarding placement of candidates' names on the 2005 primary ballot. I appreciate your providing my office with a copy of the "Rules for the Nomination of Republican Candidates." We will keep your rules on file as a reference in the event they are germane to the implementation of the new primary. At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary.

I hope this information is of use to you. I have copied the Secretary of State on my reply so that his office can provide notice to you and your client when administrative rules are filed and adopted. As further information becomes available regarding the implementation of this new primary in King County, I will make every effort to keep you informed.

Sincerely,

Dean C. Logan

Dean C. Logan

Director

cc: Hon. Sam Reed, Secretary of State

Nick Handy, State Elections Director, Office of the Secretary of State

Janine Joly, Sr. Deputy Prosecuting Attorney, Office of the King County Prosecutor

EXHIBIT 9

Washington Secretary of State

Elections Calendar

1/1/2005	LEGAL HOLIDAY – NEW YEAR'S DAY (RCW 1.16.050)
1/8/2005	Last day to register to vote for the February 8 special election except for in-person registration at the auditor"s office (RCW 29A.08.140)(RCW 29A.08.145)
1/10/2005	First day to file Initiatives to the People (RCW 29A.72.030)
1/10/2005	Regular Legislative Session begins (44.04.010)
1/17/2005	LEGAL HOLIDAY – MARTIN LUTHER KING, JR. DAY (RCW 1.16.050)
1/18/2005	PDC Form C-4
1/19/2005	Auditors to have absentee ballots available for the February 8 special election (RCW 29A.40.070)
1/21/2005	Auditors to have absentee ballots mailed for the February 8 special election (RCW 29A.40.070)
1/21/2005	Last day for filing resolutions for the March 8 special election (RCW 29A04.330)
1/24/2005	Last day for in-person registration at the auditor"s office for the February 8 special election (RCW 29A.08.145)

1/24/2005	Last week for auditors to publish notice of closing of registration for the March 8 special election (RCW 29A.08.140)
1/26/2005	First day to apply for an absentee ballot for the April 26 special election (RCW 29A.40.020)(RCW 29A.40.050)
1/27/2005	Last day for adoption of resolutions for a local voters pamphlet for the March 8 special election (RCW 29A.32.210)
1/29/2005	First day auditors may publish notice of the February 8 special election (RCW 29A.52.351)
2/1/2005	PDC Form C-4
2/5/2005	Last day to register to vote for the March 8 special election except for in-person registration at the auditor's office (RCW 29A.08.140)(RCW 29A.08.145)
2/5/2005	Last day auditors may publish notice of the February 8 special election (RCW 29A.52.351)
2/7/2005	Last day to apply for an absentee ballot for the February 8 special election (RCW 29A.40.020)
2/8/2005	SPECIAL ELECTION (RCW 29A04.321)(RCW 29A.04.330)
2/15/2005	PDC Form C-4
2/16/2005	Auditors to have absentee ballots available for the March 8 special election (RCW 29A.40.070)

2/16/2005	First day to apply for an absentee ballot for the May 17 special election (RCW 29A.40.020)(RCW 29A.40.050)
2/18/2005	County canvassing board to certify the February 8 special election returns (RCW 29A.60.190)
2/18/2005	Last day for in-person registration at the auditor's office for the March 8 special election (RCW 29A.08.145)
2/18/2005	Auditors to have absentee ballots mailed for the March 8 special election (RCW 29A.40.070)
2/21/2005	LEGAL HOLIDAY – PRESIDENTS' DAY (RCW 1.16.050)
2/26/2005	First day auditors may publish notice of the March 8 special election (RCW 29A.52.351)
3/1/2005	PDC Form C-4
3/5/2005	Last day auditors may publish notice of the March 8 special election (RCW 29A.52.351)
3/7/2005	Last day to apply for an absentee ballot for the March 8 special election (RCW 29A.40.020)
3/8/2005	SPECIAL ELECTION (RCW 29A.04.330)
3/9/2005	First day to file Initiatives to the legislature (RCW 29A.72.030)
3/10/2005	PDC Form C-4

3/11/2005	Last day for filing resolutions for the April 26 special election (RCW 29A.04.330)
3/14/2005	Last week for auditors to publish notice of closing of registration for the April 26 special election (RCW 29A.08.140)
3/17/2005	Last day for adoption of resolutions for a local voters pamphlet for the April 26 special election (RCW 29A.32.210)
3/18/2005	County canvassing board to certify the March 8 special election returns (RCW 29A.60.190)
3/26/2005	Last day to register to vote for the April 26 special election except for in-person registration at the auditor's office (RCW 29A.08.140)(RCW 29A.08.145)
4/1/2005	Last day for filing resolutions for the May 17 special election (RCW 29A.04.330)
4/4/2005	Last week for auditors to publish notice of closing of registration for the May 17 special election (RCW 29A.08.140)
4/5/2005	PDC Form C-4
4/6/2005	Auditors to have absentee ballots available for the April 26 special election (RCW 29A.40.070)
4/7/2005	Last day for adoption of resolutions for a local voters pamphlet for the May 17 special election (RCW 29A.32.210)

4/8/2005	Auditors to have absentee ballots mailed for the April 26 special election (RCW 29A.40.070)
4/11/2005	Last day for in-person registration at the auditor's office for the April 26 special election (RCW 29A.08.145)
4/11/2005	PDC Form C-4
4/16/2005	Last day to resister to vote for the May 17 special election except for in-person registration at the auditor's office (RCW 29A.08.140)(RCW 29A.08.145)
4/16/2005	First day auditors may publish notice of the April 26 special election (RCW 29A.52.351)
4/19/2005	PDC Form C-4
4/23/2005	Last day auditors may publish notice of the April 26 special election (RCW 29A.52.351)
4/24/2005	Regular Legislative Session ends (Article II. Section 12, Washington State Constitution)
4/25/2005	Last day to apply for an absentee ballot for the April 26 special election (RCW 29A.40.20)
4/26/2005	SPECIAL ELECTION (RCW 29A.04.321)(RCW 29A.04.330)
4/26/2005	PDC Form C-4
4/27/2005	Auditors to have absentee ballots available for the May 17 special election (RCW 29A.40.070)

4/29/2005	Auditors to have absentee ballots mailed for the May 17 special election (RCW 29A.40.070)
5/2/2005	Last day for in-person registration at the auditor's office for the May 17 special election (RCW 29A.08.145)
5/6/2005	County canvassing board to certify the April 26 special election returns (RCW 29A.60.160)
5/7/2005	First day auditors may publish notice of the May 17 special election (RCW 29A.52.351)
5/10/2005	PDC Form C-4
5/14/2005	Last day auditors may publish notice of the May 17 special election (RCW 29A.52.351)
5/16/2005	Last day to apply for an absentee ballot for the May 17 special election (RCW 29A.40.020)
5/17/2005	SPECIAL ELECTION (RCW 29A.04.330)
5/27/2005	County canvassing board to certify the May 17 special election returns (RCW 29A.60.160)
5/30/2005	LEGAL HOLIDAY – MEMORIAL DAY (RCW 1.16.050)
6/10/2005	PDC Form C-4
6/22/2005	Last day for adoption of resolutions for a local voters pamphlet for the primary (RCW 29A.32.210)

6/22/2005	First day to apply for an absentee ballot for the primary (RCW 29A.40.020)(RCW 29A.40.050)
6/24/2005	Last day for filing officer to assign position numbers for election purposes (RCW 29A.24.010)
7/4/2005	LEGAL HOLIDAY – INDEPENDENCE DAY (RCW 1.16.050)
7/8/2005	Last day to file signatures for Initiatives to the People (RCW 29A.72.030)
7/11/2005	First day candidate filings by mail may be accepted (RCW 29A.24.081)
7/25/2005	First day for all candidates to file for office (RCW 29A.24.050)
7/29/2005	Last day for all candidates to file for office (RCW 29A.24.050)
8/4/2005	Last day for candidates to withdraw (RCW 29A.24.131)
8/5/2005	Last day for filing resolutions for special elections held in conjunction with the primary (RCW 29A.04.330)
8/5/2005	Last day for major parties to fill vacancies (RCW 29A.28.011)
8/8/2005	Last day void in candidacy or vacancy in non-partisan office will cause filings to be reopened for a three-day filing period. The names to appear on the primary ballot (RCW 29A.24.171)

8/8/2005	Last day vacancy in partisan office will cause an unexpired term election (RCW 29A.24.211)
8/8/2005	Last day for Secretary of State to certify candidates to auditors (RCW 29A.36.011)
8/8/2005	Last week for auditors to publish notice of closing of registration for the primary (RCW 29A.08.140)
8/9/2005	First day void in candidacy or vacancy in non-partisan office (other than Superintendent of Public Instruction or Judge of the Supreme Court) will cause filings to be reopened for a three-day filing period. The names to appear only on the general election ballot (RCW 29A.24.181)
8/10/2005	Last day for adoption of resolutions for a local voters pamphlet for the general election (RCW 29A.32.210)
8/10/2005	First day to apply for a general election absentee ballot (RCW 29A.40.020)(RCW 29A.40.050)
8/20/2005	Last day to register to vote in the state primary except for in-person registration at the auditor's office (RCW 29A.08.140)(RCW 29A.08.145)
8/30/2005	PDC Form C-4
8/31/2005	Auditors to have absentee ballots available for the primary (RCW 29A.40.070)

9/2/2005	Auditors to have absentee ballots mailed for the primary (RCW 29A.40.070)
9/2/2005	Last day for in-person registration at the auditor's office for the primary (RCW 29A.08.145)
9/5/2005	LEGAL HOLIDAY – LABOR DAY (RCW 1.16.050)
9/10/2005	First day auditors may publish notice of the primary (RCW 29A.52.311)
9/13/2005	PDC Form C-4
9/17/2005	Last day auditors may publish notice of the primary (RCW 29A.52.311)
9/19/2005	Last day for write-in candidates to file Declaration of Candidacy for the primary (RCW 29A.24.311)
9/19/2005	Last day to apply for an absentee ballot for the primary (RCW 29A.40.020)
9/20/2005	STATE PRIMARY (RCW 29A.04.311)(RCW 29A.04.330)
9/23/2005	Last day for filing resolutions for a special election to be held in conjunction with the general election (RCW 29A.04.330)
9/26/2005	Last week for auditors to publish notice of closing of registration for the general election (RCW 29A.08.140)
9/26/2005	Last day void in candidacy or vacancy in a non-partisan office (other than Superintendent of Public Instruction or

judge of the Supreme Court) will cause filings to be re-opened for a three-day filing period. The names to appear only on the general election ballot (RCW 29A.24.181)

9/30/2005 County canvassing board to certify the primary returns (RCW 29A.60.190)

10/3/2005 Last day for auditors to transmit abstract of primary votes to the Secretary of State (RCW 29A.60.230)

10/8/2005 Last day to register to vote in the general election except for in-person registration at the auditor's office (RCW 29A.08.140)(RCW 29A.08.145)

10/10/2005 PDC Form C-4

10/11/2005 Last day for Secretary of State to certify the primary returns (RCW 29A.60.240)

10/12/2005 Last day for Secretary of State to certify nominees and state measures to auditors (RCW 29A.52.321)

10/18/2005 PDC Form C-4

10/19/2005 Auditors to have absentee ballots available for the state general election (RCW 29A.40.070)

10/21/2005 Auditors to have absentee ballots mailed for the state general election (29A.40.070)

10/24/2005 Last day for in-person registration at the auditor's office for the general election (RCW 29A.08.145)

10/29/2005	First day auditors may publish notice of the general election (RCW 29A.52.350)
11/1/2005	PDC Form C-4
11/5/2005	Last day auditors may publish notice of the general election (RCW 29A.52.351)
11/7/2005	Last day for write-in candidates to file a Declaration of Candidacy (RCW 29A.24.311)
11/7/2005	Last day to apply for an absentee ballot for the general election (RCW 29A.40.020)
11/8/2005	STATE GENERAL ELECTION (RCW 29A.04.321)(RCW 29A.04.330)
11/11/2005	LEGAL HOLIDAY – VETERANS' DAY (RCW 1.16.050)
11/23/2005	County canvassing boards to certify the general election returns (RCW 29A.60.190)
11/24/2005	LEGAL HOLIDAY – THANKSGIVING DAY (RCW 1.16.050)
11/25/2005	STATE OBSERVED HOLIDAY (RCW 1.16.050)
11/28/2005	Last day for auditors to transmit abstract of general election votes to Secretary of State (RCW 29A.60.230)
12/8/2005	Last day for Secretary of State to certify the state general election returns (RCW 29A.60.250)

12/8/2005	State measures receiving favorable majority vote are declared law by governor unless effective date is contained within test of measure (RCW 29A.60.260)
12/10/2005	PDC Form C-4
12/23/2005	Last day to file resolutions for the February 7, 2006 special election (RCW 29A.04.330)
12/25/2005	LEGAL HOLIDAY – CHRISTMAS DAY (RCW 1.16.050)
12/26/2005	STATE OBSERVED HOLIDAY (RCW 1.16.050)
12/29/2005	LAST DAY FOR ADOPTION OF RESOLUTIONS FOR A LOCAL VOTERS PAMPHLET FOR THE February 7 special election (RCW 29A.32.210)
12/30/2005	Last day to file signatures for Initiatives to the legislature (RCW 29A.72.030)

You can find this information at: http://www.secstate.wa.gov/elections/calendar_list.aspx

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, CHRISTOPHER VANCE, BERTABELLE HUBKA, STEVE NEIGHBORS, BRENT BOGER, MARCY COLLINS, MICHAEL YOUNG,

Plaintiffs,

v.

DEAN LOGAN, King County Records & Elections Division Manager; BOB TERWILLIGER, Snohomish County Auditor; VICKY DALTON, Spokane County Auditor, GREG KIMSEY, Clark County Auditor, CHRISTINA SWANSON, Cowlitz County Auditor, VERN SPATZ, Grays Harbor County Auditor, PAT GARDNER, Pacific County Auditor, DIANE L. TISCHER, Wahkiakum County Auditor, and DONNA M. ELDRIDGE, Jefferson County Auditor,

Defendants.

NO. 05-0927-Z

ANSWER OF STATE OF WASHINGTON INTERVENORS

I. NATURE OF ACTION

1. Paragraph 1 of the Complaint purports to be a paraphrase and summary of the

constitutional rights of political parties, including a quote from case law. This paragraph amounts to legal argument and does not require an answer. To the extent an answer is appropriate, the State denies that Paragraph 1 is an accurate summary of the law. The quote is accurate but misleading when removed from its context.

2. Paragraph 2 of the Complaint consists of legal argument concerning the "fundamental purposes of the First Amendment" and does not require an answer. To the extent an answer is appropriate, the State asserts that Paragraph 2 is irrelevant to this case, as Washington law does not implicate the principles there advanced.

3. Responding to Paragraph 3 of the Complaint, the State admits that Initiative Measure No. 872 (I-872) was enacted through voter approval of an initiative measure, and took effect on or about December 2, 2004. The remainder of Paragraph 3 consists of legal argument concerning the legal effect of Washington state law. To the extent an answer is required, the State denies that Paragraph 3 accurately states the law.

4. Paragraph 4 of the Complaint consists of speculation concerning the intent behind the adoption of Initiative 872 and argument concerning its legal effect. To the extent an answer is required, the State denies that Paragraph 4 accurately characterizes the intent of the initiative measure or its effect on political parties.

5. Responding to Paragraph 5 of the Complaint, the State understands that the Plaintiffs have filed this action to protect what the Plaintiffs

assert to be First Amendment rights. The State denies that Initiative 872 censors or interferes with the rights of the plaintiffs, and denies that Initiative 872 is unconstitutional.

II. JURISDICTION AND VENUE

6. In response to Paragraph 6 of the Complaint, the State admits that this case presents a federal question and that this Court has jurisdiction. The remainder of Paragraph 6 consists of legal argument and does not require a response.

7. In response to Paragraph 7 of the Complaint, the State admits that the Western District of Washington is a proper venue for this action.

III. PARTIES

8. In response to Paragraph 8 of the Complaint, the State admits that the Republican Party meets the definition of "major political party" set forth in RCW 29A.04.086. The State does not have knowledge sufficient to admit or deny the remaining allegations in Paragraph 8, but has no reason to doubt their truth.

9-14. In response to Paragraph 9 through 14 of the Complaint, the State lacks sufficient knowledge to admit or deny the allegations contained therein, but has no reason to doubt the truth of those allegations.

15. In response to Paragraph 15 of the Complaint, the State admits that this paragraph accurately names several county officers. These officers have powers and responsibilities as described in state law. The State further admits that all of the

counties mentioned in Paragraph 15, except Spokane County, lie within the Western District of Washington.

IV. WASHINGTON'S ELECTION SYSTEM

16. Responding to Paragraph 16 of the Complaint, the State admits that a primary will occur in September of 2005, and that it will include both "partisan offices" and nonpartisan offices as defined by Initiative 872. Initiative 872 defines "partisan office" as "a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name." I-872, § 4. The initiative measure further provides that for partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots. I-872, § 7(3). The initiative further states that "any party or independent preferences are shown for the information of voters only and may in no way limit the options available to voters." *Id.* When a primary is conducted for a partisan office, the top two candidates will be certified as qualified to appear on the general election ballot, unless only one candidate qualifies. I-872, § 7(2). To the extent that Paragraph 16 of the Complaint cites Washington statutes that are inconsistent with Initiative 872, the State asserts that these statutes have been superseded or impliedly amended by Initiative 872. The State specifically asserts that its primary is not used to nominate or select the candidates of any political

party for public office. Washington law neither requires political parties to nominate candidates for office, nor prevents them from doing so if they choose. The State has no specific knowledge as to whether defendants Logan, Kimsey, Dalton, and Terwilliger have made the assertions ascribed to them in Paragraph 16, but has no reason to doubt the accuracy of the allegation.

17. In response to Paragraph 17, the State denies that state law, including Initiative 872, interferes or seriously burdens the rights of political parties and their adherents to exercise their rights of association. State law does not force any political party to participate in state elections, including primaries. The State denies that permitting candidates to list a party preference on the primary ballot constitutes an "association" between the candidate and a political party or, if it does, that such an "association" constitutes any cognizable burden on the associational rights of the parties. The State denies that state law allows any person to appropriate a political party's name. To the extent this answer does not otherwise fully respond to the allegations in Paragraph 17, they are denied.

18. Paragraph 18 of the Complaint consists entirely of legal argument concerning the alleged legal effect of state law. To the extent an answer is required, the State denies that Paragraph 18 accurately states the law.

19. In response to Paragraph 19 of the Complaint, the State asserts that the Washington state primary as established in Initiative 872 does not select "standard-bearers" or party nominees. The

remainder of the allegations, which constitute legal argument concerning the effect of the initiative measure and other laws and the purposes behind its enactment, are denied.

20. The allegations contained in Paragraph 20 of the Complaint consist of legal argument. To the extent they require answer, they are denied. The Washington election system does not invade the plaintiffs' rights of political association.

21. The State denies the allegations contained in Paragraph 21 of the Complaint. Since Washington does not conduct a primary in which party nominees are selected, these allegations are not material.

V. ALLEGATIONS CONCERNING DENIAL OF EQUAL PROTECTION

22. In response to Paragraph 22 of the Complaint, the State asserts that Washington law no longer makes party nomination a part of the state's electoral process, although political parties may endorse candidates for any office. To the extent that RCW 29A.20.121 provided that minor party candidates would be placed on the general election ballot by virtue of nomination by convention, it has been superseded by Initiative 872 and is no longer operable. The State denies that its laws invade the associational rights of any political party, or that its laws deny the Plaintiffs the equal protection of the law.

23. In response to Paragraph 23 of the Complaint, this Paragraph cites statutes that have been superseded or rendered inoperable by the

enactment of Initiative Measure 872. The State denies that its election system denies to any political party the right to nominate its candidates, or to enforce any legally cognizable rights concerning use of a political party's name. As amended by Initiative 872, state law draws no constitutionally significant distinctions between major and minor parties.

VI. DEMOCRATIC PARTY OF WASHINGTON V. REED

24. Responding to Paragraph 24 of the Complaint, the State admits that the case of *Democratic Party v. Reed* was litigated, and resulted in a court declaration that a previous state primary system was unconstitutional. The State denies any remaining allegations in Paragraph 24.

25. Paragraph 25 of the Complaint consists of selected quotes from case law and of legal argument. The State admits that the quotations are accurate, though taken out of context. The State denies the remaining allegations in Paragraph 25.

26. Paragraph 26 of the Complaint consists of legal argument to the effect that Initiative 872 establishes an election system which has the same constitutional defects as the system invalidated in *Democratic Party v. Reed*. To the extent an answer is required, the State denies that its laws are unconstitutional.

VII. ALLEGATIONS CONCERNING DEPRIVATIONS OF CIVIL RIGHTS

27. Responding to the allegations in Paragraph 27 of the Complaint, the State admits that the Republican Party has adopted rules

governing the nomination of its candidates for public office and that those rules have been provided to various parties, including the county auditors.

28. The allegations contained in Paragraph 28 of the Complaint are legal argument. To the extent they require an answer, the State denies them.

29. The State denies the allegations contained in Paragraph 29 of the Complaint.

VIII. PLAINTIFFS' FIRST CAUSE OF ACTION

30. The State realleges and incorporates by reference Paragraphs 1-29 above.

31. Responding to Paragraph 31 of the Complaint, the State admits that there is a disagreement between the Plaintiffs and the State concerning the constitutionality of state election laws, but denies that the Plaintiffs have stated any cognizable claim for relief.

32. The State denies the allegations in Paragraph 32 of the Complaint.

33. The State denies the allegations in Paragraph 33 of the Complaint.

34. Responding to Paragraph 34 of the Complaint, the State admits that Initiative 872 has no specific severability clause, but denies that the absence of a severability clause would require the Court to void the entire enactment upon a finding that any portion is unconstitutional.

35. The State denies the allegations in Paragraph 35 of the Complaint.

IX. PLAINTIFFS' SECOND CAUSE OF ACTION

36. The State realleges and incorporates by reference Paragraphs 1 through 35 above.

37. The State denies the allegations in Paragraph 37 of the Complaint.

38. The State denies the allegations in Paragraph 38 of the Complaint.

X. PLAINTIFFS' THIRD CAUSE OF ACTION

39. The State realleges and incorporates by reference Paragraphs 1 through 38 above.

40. The State denies the allegations in Paragraph 40 of the Complaint.

41. The State denies the allegations in Paragraph 41 of the Complaint.

XI. PLAINTIFFS' FOURTH CAUSE OF ACTION

42. The State realleges and incorporates by reference Paragraphs 1 through 41 above.

43. The State denies the allegations in Paragraph 43 of the Complaint.

44. The State denies the allegations in Paragraph 44 of the Complaint.

45. The State denies the allegations in Paragraph 45 of the Complaint.

46. The State denies the allegations in Paragraph 46 of the Complaint.

XII. STATE'S DEFENSE

1. The Complaint fails to state a claim on which relief can be granted.

XIII. PRAYER FOR RELIEF

The State Intervenor Defendants respectfully request the Court to enter judgment as follows:

1. Dismissing the Complaint for failure to state a claim on which relief can be granted.

2. Declaring that Washington's election laws, and the conduct of elections under those laws, do not deprive the Plaintiffs of any legally cognizable constitutional or other rights protected by either the Constitution and laws of the United States or of the state of Washington.

3. Denying the declaratory and injunctive relief requested by the Plaintiffs or by Plaintiff Intervenors.

4. Granting the State its reasonable fees and costs to the extent permitted by law.

5. Granting such other relief as the Court may deem appropriate.

DATED this 2nd day of June, 2005.

ROB MCKENNA
Attorney General

MAUREEN A. HART, WSBA #7831
Solicitor General

James K. Pharris

JAMES K. PHARRIS, WSBA #5313
Sr. Assistant Attorney General

JEFFREY T. EVEN, WSBA #20367
Assistant Attorney General

PO Box 40100
Olympia, WA 98504-0100
360-753-6200

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, CHRISTOPHER VANCE, BERTABELLE HUBKA, STEVE NEIGHBORS, BRENT BOGER, MARCY COLLINS, MICHAEL YOUNG, Plaintiffs, v. DEAN LOGAN, King County Records & Elections Division Manager; BOB TERWILLIGER, Snohomish County Auditor; VICKY DALTON, Spokane County Auditor, GREG KIMSEY, Clark County Auditor, CHRISTINA SWANSON, Cowlitz County Auditor, VERN SPATZ, Grays Harbor County Auditor, PAT GARDNER, Pacific County Auditor, DIANE L. TISCHER, Wahkiakum County Auditor, and DONNA M. ELDRIDGE, Jefferson County Auditor, Defendants.	NO. 05-0927-Z **MOTION TO INTERVENE BY STATE OF WASHINGTON; SECRETARY OF STATE, SAM REED; AND ATTORNEY GENERAL, ROB MCKENNA** **Noted for Consideration: June 17, 2005**

The State of Washington, together with Sam Reed, Washington Secretary of State, and Rob McKenna, Washington State Attorney General,

move to intervene in this action as additional parties defendant. This motion is made pursuant to Civil Rule 24(a), (b), (c), and to 28 U.S.C. § 2403(b).

I. IDENTITY OF INTERVENORS

The State of Washington is one of the fifty sovereign states that constitute the United States of America. Sam Reed is the duly elected Secretary of State of the state of Washington. Rob McKenna is the duly elected Attorney General of the state of Washington. The State's Answer to the Complaint filed herein is Exhibit A to this Motion.

II. NATURE OF CASE

This is a suit brought by the Washington State Republican Party and certain of its officers, asserting that certain laws enacted by the State of Washington (specifically Initiative Measure No. 872, enacted by initiative and taking effect on December 2, 2004), are unconstitutional and that their implementation and enforcement should be enjoined. The Democratic and Libertarian Parties have filed motions to intervene, making allegations similar to those of the Republicans. The named defendants are the principal election officers of nine counties in Washington.

III. NATURE OF STATE'S INTEREST IN INTERVENING

Federal statute gives the State the right to intervene in a federal case, to offer evidence, and to present argument defending the constitutionality of a state law if a case includes an assertion that the state law is contrary to the United States

Constitution or to federal law. 28 U.S.C. § 2403(b). Civil Rule 24(c) instructs the Court to notify the State Attorney General in such a case.[1]

In addition, the State asserts that it is also entitled to intervene under Rule 24(a), because both Secretary Reed and Attorney General McKenna have duties and responsibilities that are affected by this action and which could be impaired or impeded if the State is not a party to the case. The Secretary of State is the chief elections officer of the State (RCW 29A.04.230) and is responsible for ensuring that county auditors are provided with the most recent version of the election laws (RCW 29A.04.235). The Secretary of State is authorized and directed to make rules concerning, among other subjects, the layout and preparation of ballots, the procedures and forms for declarations of candidacy for public office, procedures for filing for office, and the procedures for conducting partisan primary elections. RCW 29A.04.611.[2] The Attorney General is charged with appearing for and representing the State in all case in which the State is interested, and defending actions and proceedings against state officers and employees. RCW 43.10.030.

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[1] The Plaintiff Republican Party delivered a courtesy copy of the pleadings to the State Attorney General shortly after the case was filed.

[2] The Secretary of State has adopted emergency rules for the conduct of the 2005 elections under Washington's current election laws, including those enacted as parts of Initiative Measure 872. A copy of the rules adopted is Exhibit B to this Motion.

The State has no reason to doubt that the nine county officers named as Defendants will vigorously defend their actions and, by extension, the state laws they are responsible for administering. However, the State and its officers have a more direct responsibility to respect and defend the validity of state statutes, and to do so on behalf of the State itself. The State can also assist the county officers in coordinating the defense of the action.

In the alternative, the State is permitted to intervene under Civil Rule 24(b). State statutes and state rules will be relied on as a basis of claims and/or defenses in this case; Rule 24(b) permits the officers administering the statutes or rules to intervene.

DATED this 2nd day of June, 2005.

ROB MCKENNA
Attorney General

MAUREEN A. HART, WSBA #7831
Solicitor General

James K. Pharris

JAMES K. PHARRIS, WSBA #5313
Sr. Assistant Attorney General

JEFFREY T. EVEN, WSBA #20367
Assistant Attorney General

PO Box 40100
Olympia, WA 98504-0100
360-753-6200

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, CHRISTOPHER VANCE, BERTABELLE HUBKA, STEVE NEIGHBORS, BRENT BOGER, MARCY COLLINS, MICHAEL YOUNG, Plaintiffs, v. DEAN LOGAN, King County Records & Elections Division Manager; BOB TERWILLIGER, Snohomish County Auditor; VICKY DALTON, Spokane County Auditor, GREG KIMSEY, Clark County Auditor, CHRISTINA SWANSON, Cowlitz County Auditor, VERN SPATZ, Grays Harbor County Auditor, PAT GARDNER, Pacific County Auditor, DIANE L. TISCHER, Wahkiakum County Auditor, and DONNA M. ELDRIDGE, Jefferson County Auditor, Defendants.	**No. C05-927Z** ~~**{PROPOSED}**~~ **ORDER GRANTING MOTION TO INTERVENE BY STATE OF WASHINGTON; SECRETARY OF STATE, SAM REED; AND ATTORNEY GENERAL, ROB MCKENNA**

The Court has reviewed the papers filed in support of and in opposition to the Motion to Intervene filed by the State of Washington, Sam Reed, and Rob McKenna, including any declarations

or exhibits. Being fully advised of the premises, the Court does here find and ORDER:

1. The Motion to intervene is GRANTED;

2. The Clerk is directed to accept for filing the Answer attached as Exhibit A to the Motion to Intervene;

3. All papers subsequently filed in this case shall be served on counsel for the State of Washington, Sam Reed, and Rob McKenna.

DONE IN OPEN COURT this *7th* day of June, 2005.

Thomas S. Zilly

_____

UNITED STATES DISTRICT COURT JUDGE

Presented by:

ROB MCKENNA
Attorney General

James K. Pharris

By _____

James K. Pharris, WSBA #5313
Sr. Assistant Attorney General
Attorneys for State of Washington Intervenors

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al.,

Plaintiffs,

v.

DEAN LOGAN, King County Records & Elections Division Manager, et al.,

Defendants,

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff-Intervenors,

LIBERTARIAN PARTY OF WASHINGTON STATE, et al..

Plaintiff-Intervenors,

STATE OF WASHINGTON, et al.,

Defendant-Intervenors,

WASHINGTON STATE GRANGE,

Defendant-Intervenors.

No. C05-0927Z

DECLARATION OF DAVID T. MCDONALD IN SUPPORT OF THE WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE'S MOTION FOR SUMMARY JUDGMENT

Noted for Oral Argument: July 13, 2005

1. I am the lead attorney for Plaintiff in Intervention the Washington State Democratic Central Committee in the above-entitled action. I am over the age of eighteen years and I am competent to make this declaration. I make this declaration based on my own personal knowledge.

2. Attached as Exhibit A is a true and accurate copy of the Bylaws of the Democratic Party of the State of Washington ("Bylaws").

3. Attached as Exhibit B is a true and accurate copy of "Yes on 872," which is available at www.blanketprimary.org/faq.php. This document was printed from that website on June 17, 2005.

3. Attached as Exhibit C is a true and accurate copy of Washington Secretary of State Emergency Rule Making Order CR-103, dated May 18, 2005.

4. Attached as Exhibit D is a true and accurate copy of "State GOP picks Hammond – Dunn will still run in primary for 9th District," The King County Journal, reprinted at msnbc.msn.com. This document was printed from that website on June 17, 2005.

5. Attached as Exhibit E is a true and accurate copy of a December, 2004 PDC ("Public Disclosure Commission") brochure entitled "Political Advertising."

I declare under penalty of perjury that the foregoing is true and correct:

EXECUTED this 7th day of June, 2005 at Seattle, Washington.

David McDonald

David McDonald

EXHIBIT A

Bylaws of the Democratic Party of State of Washington

(As amended by WSDCC 1/24/04)

These bylaws are adopted pursuant to the Charter of the Democratic Party of the State of Washington.

Article I

State Democratic Convention

The State Convention of the Democratic party is the highest authority of the Democratic Party of the State of Washington, subject to the provisions of the Charter of the Democratic party of the State of Washington. The Convention shall be called by the Washington State Democratic Central committee pursuant to Articles V and VI and the State Charter.

Article II

Washington State Democratic Central Committee

A. Purpose and Powers

1. The Washington State Democratic Central Committee, also known as the State Central Committee ("SCC"), is the governing body of the Democratic Party of the State of Washington as authorized by the Democratic State Convention and the Charter of the Democratic party of the State of Washington.
2. The SCC shall have all powers and carry out all duties delegated to it by the Convention under the Charter. The SCC is the sole party organization authorized to collect and disburse funds in the name of the Democratic party of

the State of Washington. The SCC provides the funds, staff and other assistance necessary for the operations of its committees.

B. Membership

1. The SCC shall consist of the state committeewoman and the state committeeman elected from each legislative district and from each county of the State of Washington, without regard to whether each is a precinct committee officer, in compliance with Article III B of the Charter.

2. Members shall be elected for two-year terms and shall serve until their successors have been elected.

3. All Members of the SCC shall have equal voice and vote in the affairs of the SCC unless these Bylaws or the Charter expressly direct to the contrary.

4. The following shall be Special Members of the SCC. They shall be entitled to equal voice and vote in affairs of the SCC when in personal attendance. Special Members have no proxy. Except where expressly limited in the Charter or in these Bylaws, Special Members shall have all rights and privileges granted to Members under these Bylaws.

   a. The elected officers of the State Central Committee.

   b. National Committeemen, and National Committeewomen elected from the State of Washington.

c. The Governor of the State of Washington when that office is held by a Democrat.

d. United States Senators from the State of Washington is such offices are held by Democrats.

e. Members of the United States House of Representatives from the State of Washington if such Members are Democrats.

f. The Leader of the Washington State Senate Democratic Caucus.

g. The Leader of the Washington State House of Representatives Democratic Caucus.

h. A representative of the Young Democrats of Washington.

i. A representative of the Federation of Democratic Women's Clubs.

j. The Chair of the Organization of County and District Chairs; provided that in the absence of the Chair, the Vice-Chair of the Organization of County and District Chairs may serve in the Chair's stead, with vote, as an alternate.

k. The SCC may from time to time extend Special membership privileges, provided that any such Extension must be adopted by the SCC by unanimous vote and shall be submitted to the next convention for ratification.

C. Officers and Their Duties

1. The officers of the SCC shall be the Chair, Vice-Chair, Secretary, Treasurer and such other officers as the SCC shall from time to time authorize and elect.

2. The officers of the SCC shall be elected for two-year terms at the first meeting of the SCC in odd-numbered years or in the case of officers added by the SCC, in the manner and at the time specified by the SCC in the resolution establishing such office.

3. In the event of a vacancy in an office, the office may be filled by election at any regular or special meeting of the SCC, provided the written notice of the proposed election has been deposited in the mail, postage prepaid, to each member of the SCC at least 15 days in advance of the meeting.

4. Vice-Chair. The Vice-Chair shall:

   a. In the absence of the Chair, or in the event of a vacancy in that office or the disability of the incumbent, perform the duties of the Chair.

   b. Develop and maintain personnel policies and committee chair job descriptions and perform such other responsibilities as the SCC or its Executive Committee or the Chair may from time to time delegate.

5. Secretary. The Secretary shall;

   a. Prepare the minutes of all meetings of the SCC or its Executive Committee and the State Convention.

   b. Keep all records of the SCC.

   c. Perform such other duties as the SCC or its Executive Committee or the Chair may from time to time delegate.

6. Treasurer. The Treasurer shall:

   a. Maintain the financial records of the SCC and all committees, and be responsible for the accurate and timely filing of all reports required by the public disclosure or taxing authorities.

   b. Be the custodian of all funds and securities of the SCC, and all committees.

   c. Deposit and disburse funds of the SCC pursuant to the current budget and policies and procedures established by the SCC or its Executive Committee.

   d. Prepare and distribute a written financial report to each meeting of the SCC.

   e. Serve as a voting member of the Finance Committee.

   f. Perform such other duties as the SCC or its Executive Committee or the Chair may from time to time delegate.

7. National Committee Members

   a. The offices of National Committee members apportioned to the State of Washington by the Democratic national Committee shall be filled by election at large by the SCC during each Presidential election year.

   b. National committee members shall serve for four year terms and until their successors are elected.

   c. In the event of a vacancy in the post of National Committee member, the SCC shall elect a replacement to serve the balance of the term. The replacement shall be selected in the manner provided for filling vacancies in officer positions.

8. Removal of Officers. Any officer may be removed upon two-thirds vote of the SCC provided at least 15 days prior notice of the meeting and the grounds for removal are given to the members and the officer whose removal is sought.

D. Meetings

1. Regular Meetings

   a. The SCC shall meet at least once a calendar quarter, at a time and place selected by the Chair, pursuant to guidelines established by the SCC or its Executive Committee; provided, however, that the Chair shall rotate the meetings among Congressional District.

b. A call for each such meeting shall be mailed to all SCC Members at least 30 days in advance of the meeting.

c. In the absence of a call for a regular meeting, any twenty-five Members of the SCC may call such a meeting by issuing a proper call and proposed agenda.

2. Organizational Meeting.

a. The first regular meeting of the SCC in odd-numbered years shall be its organizational meeting. This meeting shall be held after legislative district and county organizational meetings, provided such meetings are held in the months of December and January immediately proceeding.

b. As its first orders of business at the organizational meeting, the SCC shall adopt temporary rules for the meeting, elect a chair and vice-chair and the other officers of the SCC.

c. In the absence of a call for an organizational meeting, any ten members of the SCC may call such a meeting by issuing a proper call and proposed agenda.

3. Special Meetings. A special meeting of the SCC may be called for any purpose by:

a. The Chair,

b. A majority of the Executive Committee,

c. Any 25 members of the SCC, provided that a proper call must be issued by the

convening authority at least 15 days in advance of the meeting.

4. Voting and Proxies

   a. All Members of the SCC shall have equal vote. In the event that any member shall be an officer or hold any additional position with the SCC which position carries a vote, the member shall nevertheless have only one vote in all affairs of the SCC.

   b. A division of the house may be called upon any point by 10%, and a roll call vote may be called by 20%, of those present and entitled to vote, including proxies.

   c. Voting by proxy shall be permitted in accordance with the following rules.

      (1) All proxies must be in writing, signed by the member. They may be specific or general, instructed or uninstructed, transferable or non-transferable, as specified by the maker. In the absence of specification, a proxy shall be deemed to be general, uninstructed and non-transferable.

      (2) No person shall hold more than one proxy.

      (3) In order to vote a proxy, the holder must register the proxy with the Secretary of the SCC before a vote is taken. Only the individual currently registered with the Secretary may vote the proxy.

(4) The holder of a proxy must reside in the county or legislative district in which the member giving the proxy resides.

5. Quorum

   a. A quorum of the SCC shall be 40% of those eligible to vote. For purposes of determining a quorum, valid proxies shall be counted.

   b. Once a quorum is established, the Chair need not entertain a quorum call until all business included in the adopted agenda for the meeting has been transacted.

6. Robert's Rules. In all matters not covered expressly the these Bylaws, Robert's Rules of Order, newly revised, shall prevail.

7. Open Meetings. All meetings of the SCC shall be open to all Democrats, except when called into Executive Session by majority vote.

E. Committees

1. The SCC shall have the following Standing Committees: Resolutions Committee, Rules and Bylaws Committee, Affirmative Action Committee; Finance Committee, Elections Committee;

2. The Standing Committees shall:

   a. each meet at the call of its chair.

   b. each report fully on its activities and proposed activities to the SCC Chair, at such times and in such form as the SCC Chair shall deem appropriate.

c. and each submit annually to the SCC a proposed budget for the SCC approval.

3. The Resolutions committee shall review proposed resolutions to the SCC and recommend their adoption or rejection; and propose rules and procedures to the SCC for the handling of resolutions.

4. The Rules and Bylaws Committee shall recommend rules of procedure for the conduct of meetings or the handling of special matters to the SCC and recommend amendments to existing rules or these Bylaws; and review proposed bylaw amendments submitted to the SCC and recommend adoption or rejection.

5. The Affirmative Action Committee shall propose and coordinate an affirmative action plan, and with the approval of the Executive Committee implement the plan, to discharge the SCC's affirmative action responsibilities under the charter of the Democratic party of the United States and the Charter of the Democratic Party of Washington.

6. The Finance Committee shall propose methods of raising funds for the SCC and, with the approval of the Executive committee, implement and coordinate fundraising plans. The Treasurer of the SCC shall be a member of the Finance Committee.

7. The Elections Committee shall propose policies and procedures to the SCC on candidate recruitment and endorsements, fair campaign practices, political ethics, and other

party policy areas as determined by the SCC or the SCC Chair.

8. Others Committees.

   a. The SCC may from time to time establish other committees to carry out such duties and have such powers at the SCC may establish. Members of such committees need not be members of the SCC.

   b. The Chair may from time to time appoint such committees to report to the Chair as the Chair may deem necessary or prudent. Such committees shall have such powers as are granted by the Chair, provided, however, that the Chair may not grant greater powers to a committee than the SCC has given the Chair.

9. Committee membership. Unless the enabling resolution shall specify a method of selection of members of a committee and its composition, the chair shall appoint the members of the committee.

10. Committee Rules. Any Committee may adopt rules of procedure for the conduct of its affairs. In the absence of specific rules, Robert's Rules of Order, newly revised, shall govern the conduct of committee affairs.

11. Minority Reports. Minority Reports may be issued from any Committee on concurrence of at least 20% of the Committee's membership.

12. Additional Duties. Committees shall perform such additional duties as the SCC shall propose.

13. Limitations on Committee Activities. The following limitations shall govern the activities of au Committees except the Executive Committee. The Committees shall not be authorized to–

    a. incur expenses or enter contracts on behalf of the Democratic party, except as specifically authorized by the SCC.

    b. issue press releases or make public statements in the name of the Democratic Party of the State of Washington except as specifically authorized by the SCC Chair.

F. Availability of Members' List – In order that Members of the SCC shall be able to freely communicate with other Members for the purpose of proposing resolutions, bylaws, amendments or other business requiring notice to the SCC under these Bylaws, the Chair shall make available to Members a mailing list of the members of the Committee at cost.

Article III

Executive Committee

A. The Executive Committee shall consist of the Chair, Vice-Chair, Treasurer, Secretary, National Committeemen and Committeewomen, the chairs of the Finance, Statutory State and Affirmative Action committees, and a representative of the Washington State Federated Democratic Women's Clubs, together with the SCC member elected by and from the SCC membership in each Congressional District.

B. The Executive Committee shall meet at the call of the Chair and have such powers and duties as are delegated to it by the SCC. AR actions of the Executive Committee must be reported to the SCC at the next SCC meeting. The Executive Committee shall prepare an annual operating budget.

Article IV

Budget, Compensation and Reimbursement

A. No later than the regular Second Quarter meeting, the SCC shall adopt a budget for the following year. Budgeted expenditures shall be divided into two parts as follows: part A shall cover all expenses for the administration of the SCC; and Part B shall cover all funds disbursed to candidates or political committees or expended directly on their behalf. Rules for the disbursement of part B funds shall be adopted annually by the SCC. no funds shall be disbursed or obligated or on behalf of the SCC except in accordance with the adopted budget and any applicable rules. The budget shall be amendable.

B. Officers or employees of the Washington State Democratic Party may be compensated and reimbursed for expenses in such amount and manner as determined by the SCC or its Executive Committee. In the absence of explicit authority to do so, no officer or employee shall receive compensation.

C. The Executive Committee may require that the books be audited at any time. Subject to Executive Committee confirmation, the Chair

shall establish an audit committee promptly after each reorganization meeting. The results of the audit shall be considered by the Executive Committee and then reported to the SCC no later than its regular second quarter meeting.

Article V

Chair of the Democratic Party of the State of Washington

A. The Chair of the Democratic party of the State of Washington shall:

1. Be the Chief Executive Officer of the SCC and preside at all meetings of the SCC or its Executive Committee.

2. Be charged with the responsibility for implementing all policies of the SCC. 3. Provide for the call to all meetings of the SCC or its Executive Committee.

4. Provide a provisions agenda for all meetings of the SCC or its Executive Committee.

3. Perform such additional duties as the SCC or its Executive Committee shall delegate to the Chair.

6. Except as otherwise provided in these bylaws, appoint the chairs of standing and special committees of the SCC.

7. Appoint legal counsel for the Washington State Democratic Party and appoint such other professionals as may be required from time to time to act for the party. Such appointments must be confirmed by a majority vote of the Executive Committee.

8. Appoint a parliamentarian, Sergeants-at-Arms, Pages, Tally Clerks and such other individuals as may be necessary for the efficient and fair administration of SCC meetings.

9. Be the Authorized Spokesperson for the Democratic party of the State of Washington.

10. Be an ex-officio voting member of all committees of the SCC except the Statutory Committee.

11. Appoint such deputy treasurers as may be needed to assist the Treasurer in filing reports.

Article VI

Statutory State Committee

A. The Statutory State Committee shall be organized according to state law (RCW 29.42.020) and shall perform only those duties explicitly specified by RCW 29.42.020(1) through (4), to wit:

"(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention shall designate. The manner, number and procedure for selection of state convention delegates shall be subject to the committee's rules and regulations duly adopted;"

"(2) Provide for the election of delegates to national conventions;"

"(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;"

"(4) Provide for the nomination of presidential electors."

B. The statutory state committee shall adopt bylaws which shall delegate those duties to the State Central Committee and which shall provide that the Chair of the Democratic party of the State of Washington shall be the chair of the statutory state committee and that the Vice-Chair elected by the state central committee shall be the vice-chair of the statutory state committee.

Article VII

Vacancies, Appointments

A. The Statutory State Committee of the Washington State Democratic Central Committee is subject to a permanent injunction issued by the Federal District Court in Cunningham v. Washington State Democratic Committee (Civ. No. C75-901, W.D. Wash 1977), enjoining the Statutory State Committee from filling vacancies on the ticket for any federal or state office voted upon by the electors of two or more counties, or filling vacancies on the ticket in legislative races, or making interim legislative appointments, in multi-county legislative districts by any method that contravenes the one person, one-vote rule. Pursuant to the delegation of authority of Article VI. B. above, the SCC shall be responsible for compliance with this injunction.

B. In making interim legislative appointment in multi-county legislative districts, the SCC shall make its appointment from a list of three names submitted to the committee by a caucus of the elected and appointed Democratic precinct committee officers of the precincts within the legislative district. The chair of the SCC shall call this caucus.

C. In making interim legislative appointments in single county legislative districts, the county central committee shall make its appointment from a list of three names submitted to the committee by a caucus of the elected and appointed Democratic precinct committee officers of the precincts within the legislative district. The county chair shall call this caucus.

D. The SCC shall develop rules for the conduct of legislative appointment caucuses.

Article VIII

County Central Committees

A. The County central committee shall be the governing body of the county Democratic party and shall have the responsibility for conducting party affairs at the county level. It shall be composed of all elected and appointed precinct committee officers.

B. In any county central committee only elected precinct committee officers and precinct committee officers appointed after the organizational meeting shall vote for county chair, vice chair, state committeewoman, state committeeman, any representative the county

central committee is authorized to send to other party organizations and on the adoption or amendment of bylaws. County central committees may allow other Democrats to participate in all other functions.

C. Each county central committee shall be organized according to state law, the Charter and Bylaws of the Democratic Party of the State of Washington, and other provisions pursuant to the authority of the Charter. Its organizational meeting shall take place in December or January following each state general election held in even-numbered years. At the organizational meeting the committee shall elect a chair, a vice chair, a state committeewoman, a state committeeman and any representatives it is authorized to send to other party organizations.

D The county central committee shall have a minimum of four (4) regular meetings a year unless there are legislative district organizations within the county.

E. In counties with legislative district organizations, the county central committee may establish a county executive board.

Article IX

Legislative District Organizations

A. The legislative district organization shall be the governing body of the legislative district Democratic Party and shall have the responsibility for conducting party affairs at the legislative district level. It shall be composed of

all elected and appointed precinct committee officers.

B. In any legislative district organization only elected precinct committee officers and precinct committee officers appointed after the organization meeting shall vote for district chair, vice chair, state committeewoman, state committeeman, any representative the legislative district organization is authorized to send to other party organizations, and on the adoption or amendment of bylaws. Legislative district organizations may allow other Democrats to participate in all other functions.

C. Each legislative district organization shall be organized according to state law, the Charter and Bylaws of the Democratic Party of the State of Washington, and other provisions pursuant to the authority of the Charter. The legislative district organization shall be organized in accordance with rules passed by the county central committee in those counties in which there are two or more complete legislative districts. In legislative districts where counties have not provided for legislative district organization meetings, the state chairperson shall do so. Its organizational meeting shall take place in December or January following each state general election held in even-numbered years. At the organizational meetings, the legislative district organization shall elect a chair, a vice chair, a state committeewoman, a state committeeman, and any representatives it is authorized to send to other party organizations. The legislative

district organization shall have a minimum of four (4) regular meetings a year.

Article X

Organization of County and District Chairs

A. The Organization of County and District Chairs shall be composed of the chair of each Democratic County Central committee and the chair of each Democratic Legislative District organization in the State of Washington.

B. The organization shall elect from its ranks a chair, vice-chair and such other officers as the organization shall be deemed appropriate.

C. The Organization shall recommend to the SCC for its consideration actions or expenditures to promote the grassroots structure of the Party and shall perform such additional duties and have such additional powers as the SCC may by resolution delegate.

Article XI

Selection of Nominees, Candidates and Delegates

A. Delegates to party conventions at all levels and party officers (whether or not such delegates and officers are declared by the State to be public officials) shall be selected by voters who support the principles of the Democratic party and wish to be publicly known as Democrats.

B. Except as otherwise required by the Charter, By-laws and Rules of the Democratic Party of the United States or by the Delegate Selection Rules of the Democratic National Committee,

candidates and nominees for public office who are or will be identified as Democrats or publicly associated with the Democratic party to any extent in the general election for such office must be selected in accordance with rules adopted by the State Central Committee. The rules adopted by the State Central Committee shall permit participation, subject to guarantees of election fairness and accountability, by voters who wish to participate in the selection but do not wish to become publicly affiliated with the Democratic party; provided the Rules may forbid the participation of any voter who has participated or will participate in the selection of candidates associated with another political party if such candidates seek to appear on the same primary or general election ballot as any Democratic candidate being selected by the process in which the voter seeks to participate.

C. In connection with any selection process in which voters who are not members of the Democratic Party are permitted to participate, the State Central Committee may require that candidates demonstrate prior to filing for office reasonable support from Party members in order to be eligible to participate in the selection process; PROVIDED, that any such requirement shall have been adopted not less than ninety days prior to the filing period for the selection process, and further provided that any such requirement shall apply equally to all candidates for each particular office.

Article XII

Amendments, Rules

A. No amendment to these Bylaws may be considered by the SCC unless notice of the proposed amendment shall have been mailed to the SCC members at least 15 days in advance.

B. Bylaws may be amended by affirmative vote of a majority of the entire membership of the SCC.

C. The SCC may from time to time adopt additional procedural rules consistent with these Bylaws for the conduct of meetings or the handling of special matters, or relating to the operation of other Party organizations. Such rules may be adopted by majority vote, but once adopted shall require a two-thirds vote to suspend.

D. Each county central committee and legislative district organization shall adopt bylaws, which shall establish a quorum and provide for calling special meetings by executive action or by petition of members.

EXHIBIT B

YES ON 872

PROTECT OUR RIGHT TO VOTE FOR THE PERSON, NOT THE PARTY

Initiative 872 Frequently Asked Questions

Washington State Grange President Terry Hunt filed approximately 300,000 signatures with the Secretary of State on July 2, 2004 for Initiative 872 to establish a qualifying primary, or "top-two" system. This will allow voters the opportunity to have the final say over the Washington State's primary election system. These questions and answers relate to the initiative and the legal and legislative context in which it is being proposed.

Why do we need Initiative 872?

Last fall, the Ninth Circuit Court of Appeals ruled that Washington could no longer conduct "blanket primaries", as it has for nearly seventy years. When the U. S. Supreme Court declined to review the lower court decision, the Legislature adopted a new type of primary, called a "qualifying primary" or a "top-two primary". However, the Governor extensively vetoed that bill, eliminating the qualifying primary and creating instead a nominating primary, or "Montana-style" system in which voters will only be able to vote for the candidates of a single party in the primary. This is the system voters will face in September 2004, and they're effectively being forced to vote a straight party ticket. This is why we need to implement I-872.

Why did we have to change our primary system at all?

In the blanket primary, each political party was guaranteed one "nominee" on the general election ballot, and voters could vote for any candidate for any office. The court ruled that we cannot do both of these things at the same time. We can have a nominating primary (where each party is guaranteed a position on the general election ballot) or we can change to a qualifying primary (where voters can continue to choose from among all the candidates in each office). The Legislature was forced to change one or the other aspect of the current law.

What is the difference between a "nominating primary" and a "qualifying primary"?

In a nominating primary, assuming candidates for all major parties file for an office, one candidate from each party is "nominated" to appear on the general election ballot for that office. Washington currently has three major political parties – Democrat, Republican, and Libertarian.

In a qualifying primary, no matter how many parties or candidates there are for an office, the two candidates who receive the most votes for each office in the primary advance to the general election.

Does this mean that, in a qualifying primary, the candidates are nonpartisan?

No, the candidates will continue to express a political party preference when they file for office and that party designation will appear on the ballot. However, party preference would not be a factor in determining which candidates advance to the

general election. The two candidates who receive the most votes for each office, regardless of party preference, will appear on the ballot at the general election.

Would the primary ballot look any different to the voter?

No. At the primary, the candidates for each office will be listed under the title of that office, the party designations will appear after the candidates' names, and the voter will be able to vote for any candidate for that office (just as they did under the blanket primary).

Would the general election ballot look different to the voter?

Sometimes, but only rarely. Depending on the number of candidates on the primary ballot for a particular office and the amount of public support each candidate achieves, the voter might be presented with a choice in the general election between two candidates of the same political party. This would only happen if both of those candidates received more votes in the primary than any other candidates (in the same party or any other political party). A qualifying primary forces political parties to recruit the best possible candidates and to actively contest all of the offices on the ballot.

In a qualifying primary, would there be offices on the general election ballot where both candidates are from the same party?

This can happen, but it should be fairly rare. According to research conducted by the secretary of state's office, only 4 percent of the legislative races in

the last 10 years would have sent candidates of the same party to the general election under the top-two system. In addition, only 3.3 percent of statewide and congressional races in the last 10 years would have advanced candidates of the same party under the top-two. In addition, the vast majority of these instances would have been in "safe" districts where one political party is very dominant and only one candidate from that party emerges from the primary. In that kind of a district, the general election voters would sometimes have a choice between both strong candidates, instead of having the race decided in the primary.

Unfortunately, we have seen recent races for Governor where one of the major parties nominated a candidate that received less than 40% of the vote in the general election. Under this initiative, parties should seek candidates with broad public support who can survive the competitive primary.

Why does the Grange think that a qualifying primary is better than a nominating primary?

There are three reasons:

1. Qualifying primaries are more competitive than nominating primaries. If a party is concerned about not being "included" in the general election, then that party will need to work harder to make sure they recruit quality candidates who can get the votes to move forward. This is a positive thing, because we not only have more choices, but we have better choices. Competition works, and it's served our country very well.

2. With qualifying primaries, the results are more representative of the political preferences and opinions of the voters. As a result, these officials are likely to be much more responsive to the interests of the people they represent, not just the interest of the political parties. Public officials should be selected by the voters, not by political parties. Voters pay their salaries and for the elections that allow them to choose their public officials.

3. Most of the voters in Washington are independents who want to support candidates of any political party – they want to vote for the person, not the party.

Does this proposed initiative create a "Cajun" primary, like they have in Louisiana?

Absolutely not. In Louisiana, voters are required to register by political party, and if a candidate receives more than 50% of the vote for an office at the primary, he or she is elected (the office does not even appear on the general ballot). Under this proposed initiative, voters would never have to declare political party affiliation and every office would appear on the general election ballot.

Would this proposal eliminate minor party candidates from the primary or general election ballot?

No. Minor parties would continue to select candidates the same way they do under the blanket primary. Their candidates would appear on the primary ballot for each office (as they do now). Minor party candidates have had good success recently advancing candidates to the general election

in districts where only one of the major political parties runs a candidate (about 15% of all legislative districts). Presumably they would continue to do well in these circumstances.

Is the qualifying primary (proposed in Initiative 872) constitutional?

Although the U. S. Supreme Court and the Ninth Circuit have ruled that this form of primary is different from the partisan blanket primary previously in use in Washington state and that nonpartisan blanket primaries are not subject to the kind of legal challenge presently being made by the political parties, the major political parties have repeatedly claimed – without foundation – that the kind of qualifying primary proposed in I-872 is unconstitutional. the majority opinion of the U. S. Supreme Court in the CAL DEMO case (in 2000) went out of its way to declare what kind of primary would meet its constitutional test. They said,

"Finally, we may observe that even if all these state interests were compelling one, Proposition 198 is not a narrowly tailored means of furthering them. Respondents could protect them all by resorting to a nonpartisan blanket primary. Generally speaking, under such a system, the State determines what qualifications it requires for a candidate to have a place on the primary ballot – which may include nomination by established parties and voter-petition requirements for independent candidates. Each voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters (or however many the State prescribes) then move on to the general election. This system has all the

characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee. Under a nonpartisan blanket primary, a State may ensure more choice, greater participation, increased "privacy," and a sense of "fairness" – all without severely burdening a political party's First Amendment right of association." (emphasis provided).

The Washington State Grange believes that the qualifying primary satisfies this description provided by the Supreme Court. If I-872 is approved by the voters and the political parties challenge, we are convinced that it can be successfully defended by the Attorney General.

EXHIBIT D

June 17, 2005 Motion for Summary Judgment of Plaintiff Washington State Republican Party [Doc. #49]

June 17, 2005 Supplemental Declaration of John J. White, Jr., re Motion for Summary Judgment [Doc. #50]

June 17, 2005 Motion for Summary Judgment of Intervenor Plaintiff Libertarian Party of Washington State [Doc. #52]

June 17, 2005 Supplement re Motion for Summary Judgment of Libertarian Party (correcting e-filing errors) [Doc. #54]

June 17, 2005 Motion for Summary Judgment of Intervenor Plaintiff Washington State Democratic Central Committee [Doc. #55]

June 17, 2005 Declaration of Paul Berendt re Motion for Summary Judgment of Democratic Central Committee [Doc. #56]

June 17, 2005 Declaration of David T. McDonald re Motion for Summary Judgment of Democratic Central Committee [Doc. #57]

June 17, 2005 Supplements re Motion for Summary Judgment of Libertarian Party (correcting e-filing errors) [Doc. #s 58-60]

June 23, 2005 Supplement re Motion for Summary Judgment of Washington State Republican Party [Doc. #63]

June 23, 2005 Declaration of Kevin B. Hanson re Motion for Summary Judgment of Washington State Republican Party [Doc. #64]

July 1, 2005 Response by Intervenor Defendant State of Washington to Motions for Summary Judgment [Doc. #65]

July 1, 2005 Declaration of James K. Pharris re Response of State of Washington [Doc. #66]

July 1, 2005 Stipulation and Agreed Order of Substitution and Dismissal [Doc. #67]

July 1, 2005 Declaration of Rod Dembowski re Intervenor Washington State Grange's Response to Motions for Summary Judgment [Doc. #68]

July 1, 2005 Exhibits A-V to Declaration by Washington State Grange in Response to Motions for Summary Judgment [Doc. #69]

July 1, 2005 Response by Intervenor Defendant Washington State Grange to Motions for Summary Judgment [Doc. #70]

July 5, 2005 Errata and Replacement Brief by Washington State Grange [Doc. #72]

July 5, 2005 Supplement to Exhibit G to Declaration of Rod Dembowski by Washington State Grange [Doc. #73]

July 6, 2005 Reply of Intervenor Plaintiff Washington State Democratic Central Committee [Doc. #75]

July 6, 2005 Second Declaration of David T. McDonald filed by Washington State Democratic Committee [Doc. #76]

July 6, 2005 Response by Plaintiff Washington State Republican Party [Doc. #77]

July 6, 2005 Reply of Intervenor Plaintiff Libertarian Party of Washington [Doc. #78]

July 6, 2005 Declaration of Richard Winger filed by Libertarian Party of Washington [Doc. #79]

July 6, 2005 Reply of Plaintiff Washington State Republican Party [Doc. #81]

July 6, 2005 Supplemental Declaration of Kevin B. Hansen filed by Washington State Republican Party [Doc. #82]

July 8, 2005 Answer of Intervenor Defendant State of Washington to Complaint of Libertarian Party of Washington State [Doc. #83]

July 8, 2005 Answer of Intervenor Defendant State of Washington to Complaint of Washington State Democratic Central Committee [Doc. #84]

July 13, 2005 Minute Entry: Oral Argument Held; Court signs stipulation and agree order of substitution and dismissal; hears argument and takes matter under advisement [Doc. #85]

July 13, 2005 Stipulation and Order of Substitution and Dismissal [Doc. #86]

July 15, 2005 Order and Preliminary Injunction by Judge Thomas S. Zilly [Doc. #87]

July 22, 2005 Praecipe to Attach Proposed Order Granting Permanent Injunction [Doc. #88]

July 27, 2005 Objections by State of Washington re Praecipe to Attach Proposed Order [Doc. #90]

July 27, 2005 Objections by Washington State Grange re Praecipe to Attach Proposed Order [Doc. #91]

July 28, 2005 Minute Order by Judge Thomas S. Zilly re Plaintiffs' request to respond to Defendants' Objections [Doc. #92]

July 29, 2005 Response of Washington State Republican Party [Doc. #93]

July 29, 2005 Permanent Injunction by Judge Thomas S. Zilly [Doc. #94]

July 29, 2005 Notice of Appeal of Washington State Grange [Doc. #95]

July 29, 2005 Civil Appeals Docketing Statement by Washington State Grange [Doc. #96]

July 29, 2005 Notice of Appeal of State of Washington [Doc. #97]

July 29, 2005 Civil Appeals Docketing Statement by State of Washington [Doc. #98]

August 1, 2005 Transcript of Proceedings filed for 7/13/05 Hearing [Doc. #101]

August 3, 2005 Appeal Notification Packet sent to US Court of Appeals re Washington State Grange Appeal [Doc. #99]

August 4, 2005 Appeal Notification Packet sent to US Court of Appeals re State of Washington Appeal [Doc. #100]

August 5, 2005 (Proposed) Time Schedule Order filed by Washington State Grange [Doc. #101]

August 5, 2005 (Proposed) Time Schedule Order filed by State of Washington [Doc. #102]

August 8, 2005 Notice by Washington State Grange Ordering Entire Transcript [Doc. #104]

August 8, 2005 Letter by John J. White Requesting Status Conference {Doc. #105]

August 10, 2005 Motion for Attorney Fees by Libertarian Party [Doc. #106]

August 12, 2005 Order by Judge Thomas S. Zilly [Doc. #107]

August 22, 2005 Order by US Court of Appeals re Briefing Schedule [Doc. #108]

September 2, 2005 Order by US Court of Appeals Amending Briefing Schedule [Doc. #109]

January 4, 2006 Clerk's Record on Appeal transmitted to US Court of Appeals

April 27, 2006 Agreed Motion to Substitute Parties filed by Washington State Republican Party [Doc. #110]

May 4, 2006 Order Granting Motion to Substitute Parties [Doc. #111]

September 18, 2006 Mandate of US Court of Appeals filed [Doc. #112]

September 18, 2006 Costs Taxed Against State of Washington [Doc. #113]

October 6, 2006 Order of USCA Amending Mandate to Reflect Amended Attorney Fees [Doc. #114]

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, CHRISTOPHER VANCE, BERTABELLE HUBKA, STEVE NEIGHBORS, BRENT BOGER, MARY COLLINS, MICHAEL YOUNG, Plaintiffs, v. DEAN LOGAN, King County Records & Elections Division Manager; BOB TERWILLIGER, Snohomish County Auditor; VICKY DALTON, Spokane County Auditor, GREG KIMSEY, Clark County Auditor, CHRISTINA SWANSON, Cowlitz County Auditor, VERN SPATZ, Grays Harbor County Auditor, PAT GARDNER, Pacific County Auditor, DIANE L. TISCHER, Wahkiakum County Auditor, DONNA ELDRIDGE, Jefferson County Auditor, Defendants,	Case No: CV05-0927-TSZ COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872 AND PRIMARY ELECTIONS

NATURE OF ACTION

1. The First and Fourteenth Amendments to the United States Constitution guarantee the right of individuals to associate in a political party,

the right of that party and its adherents to select their nominees for partisan political office, and the right of that party and its adherents to limit participation in the process of selecting nominees to those voters the party and its adherents identify as sharing their interests and persuasions. As the Ninth Circuit noted in striking down Washington's blanket primary, "... the Washington statutory scheme prevents those voters who share their affiliation from selecting their party's nominees. The right of people adhering to a political party to freely associate is not limited to getting together for cocktails and canapés. Party adherents are entitled to associate to choose their party's nominees for public office." *Democratic Party of Washington v. Reed*, 343 F.3d 1198 (9th Cir. 2003), *cert. denied*, 540 U.S. 1213, *cert. denied sub nom., Washington State Grange v. Washington State Democratic Party*, 541 U.S. 957 (2004) ("*Reed*").

2. One of the fundamental purposes of the First Amendment is to provide for and promote competition between ideas in American civilization. This purpose is advanced by requiring the selection of a political party's candidates and nominees by its adherents rather than by those opposed to or indifferent to the party.

3. The State of Washington ("the State") has enacted Initiative 872, attempting to prevent the Washington State Republican Party ("the Party") and its adherents from selecting their nominees, and to force the Party to be associated publicly with candidates who have not been nominated by the Party, who will alter the political message and agenda the Party seeks to advance, and who will

confuse the voting public with respect to what the Party and its adherents stand for. The State seeks to appropriate the use of the Republican Party's name in primaries and general elections in order to protect the political interests of the incumbent and the well-known at the expense of the committed and the innovative. Acting under color of law, state and local officials force the Party and its adherents to include supporters of other parties and political interests in determining which, or whether any, candidate will carry the Republican Party name in the general election.

4. Initiative 872, as set forth in both Sections 2 and 18, was expressly intended to defeat the First Amendment rights of the Party and its adherents, recognized by the U.S. Supreme Court in *California Democratic Party v. Jones*, 530 U.S. 567 (2000) and *Reed* ("In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective...."). The Initiative, as implemented by State and local officials, eliminates mechanisms previously enacted by the state to protect these rights and provides no effective substitute mechanisms for the Party and its adherents to protect their rights of association and of determining the Party's message.

5. This is an action to protect the First Amendment rights of the Party and its adherents to advocate and promote their vision for the future without censorship or interference by the State and County Auditors acting under color of the laws of the State of Washington. Initiative 872 is unconstitutional.

JURISDICTION AND VENUE

6. Plaintiffs' rights of political association and political expression are guaranteed against abridgement by the State and those acting under color of its laws by the First and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983. This case presents a federal question involving federally-protected rights, including freedom of speech and protection against state-imposed burdens upon the associational rights of the Party and its adherents, as set forth in *Jones* and *Reed*. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1343(a)(3), 2201 and 2202.

7. Defendants reside in the Western District of the State of Washington (the "Western District") and the conduct that gives rise to Plaintiffs' claims substantially occurred and threatens to occur within the Western District. Venue for this action lies within the Western District pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. The Party is a "major political party" as defined in RCW 29A.04.086 and is organized for the purposes of promoting the political beliefs of its adherents, selecting and supporting candidates who support the political beliefs of the Party's adherents and electing public officials who will conduct government affairs in a manner consistent with the Party's philosophy. The Party has all the powers inherent in a political organization and is empowered to perform all functions inherent in a political party.

9. Plaintiff Christopher Vance is a resident of the Western District. He is the elected Chairman of the Republican State Committee, the governing body of the Party, and is the political and administrative head of the Party pursuant to its Bylaws and RCW 29A.80.020 *et seq.*

10. Plaintiff Brent Boger is a resident of the Western District and a member of the Party's State Committee.

11. Plaintiff Marcy Collins is a resident of Washington and a member of the Party's State Committee.

12. Plaintiff Bertabelle Hubka is a resident of the Western District, a Party adherent, and a registered voter in King County.

13. Plaintiff Steve Neighbors is a resident of the Western District, chairman of the Snohomish County Republican Party, and a registered voter in Snohomish County.

14. Plaintiff Michael Young is a resident of the Western District, Chairman of the King County Republican Party, and a registered voter in King County.

15. Defendants Dean Logan, King County Records & Elections Division Manager; Bob Terwilliger, Snohomish County Auditor; Vicky Dalton, Spokane County Auditor; Greg Kimsey, Clark County Auditor; Christina Swanson, Cowlitz County Auditor; Vern Spatz, Grays Harbor County Auditor; Pat Gardner, Pacific County Auditor; Diane L. Tischer, Wahkiakum County Auditor; and Donna M. Eldridge, Jefferson County Auditor ("the County

Auditors") are election officers in the State, having the overall responsibility under RCW 29A.04.025 to conduct primary elections within their respective counties, including providing and tabulating ballots for such elections consistent with the rules established by the Secretary of State ("the Secretary"). The County Auditors, except Vicky Dalton, reside in the Western District.

WASHINGTON'S PARTISAN PRIMARY

16. The Defendants will administer partisan primaries in September of 2005. Pursuant to the laws of the State, the Party is required to advance its candidates for congressional, state and county offices by means of partisan political primaries administered by the Secretary and the County Auditors. Under RCW 29A.52.116, "Major political party candidates for all partisan elected offices, except for president and vice-president ... must be nominated at primaries held under this chapter." The mandatory notice of the primary under RCW 29A.52.311must contain "the proper party designation" of each candidate in the primary. Under RCW 29A.52.112, adopted by I-872, if a candidate for partisan office "has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots." The same statute also provides that the "top two" vote-getters in the primary will advance to the general election. The Secretary has asserted that only the two candidates who receive the most votes in the primary will advance to the general election even if both candidates are associated with the same political

party. Defendants Logan, Kimsey, Dalton and Terwilliger have all asserted: "At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary."

17. Neither the laws of the State nor the rules adopted or proposed by the Secretary provide any mechanism for the Party and its adherents to effectively exercise their right of association in connection with the partisan primary in which they are forced by State law to participate. Any person may appropriate the Party's name, regardless of whether the Party desires affiliation with that person.

18. The State, through its filing statute, compels the Party and its adherents to associate with any person who files a declaration of candidacy expressing a "preference" for the Party, regardless whether the Party and its adherents desire association with that person.

19. In addition to requiring the Party and its adherents to accept as their candidate any person without regard to the person's political philosophy or participation in Party affairs, RCW 29A.04.127 forces the Party and its adherents to permit any voter to participate in selection of the Party's standard-bearer without regard to the voter's partisan affiliation or beliefs. The State thus forces the Party and its adherents to associate with those who do not share their beliefs or are openly antagonistic to them. Initiative 872 was intended to establish a *de facto* blanket primary in response to a judicial determination that the blanket primary is

unconstitutional, to facilitate cross-over voting and ticket-splitting, depriving the Party and its adherents of their right to prevent supporters of other political parties and interests from participating in their candidate selection and nomination processes. It was intended to force the Party to modify its message or have a modified message forced upon it by the simple expedient of eliminating the selected spokesmen of the Party and its adherents in favor of a spokesman selected by non-adherents of the Party. The sponsors' official statement in support of the Initiative states, "Parties will have to recruit candidates with broad public support and run campaigns that appeal to all voters." This attempt to force the Party to modify its message was rejected as a legitimate state interest by both the Supreme Court in *Jones* and the Ninth Circuit in *Reed*.

20. The other interests asserted as the basis for adopting I-872, codified as RCW 29A.04.206, were also rejected in *Reed* as legitimate grounds for invading the right of political association.

21. The Party and its adherents are irreparably injured by the forced adulteration of the Party's nomination process, by the State's active encouragement of cross-over voting and ticket-splitting, and by the resulting dilution and potential suppression pf the Party's message. The presence and participation of non-party voters in the partisan primary inevitably alters candidates' messages and actions and thereby dilute the Party's message and influence. Dilution of Party adherents' vote in any partisan primary carries with it the risk that the

Party will be denied a place on the general election ballot to the extent that only the "top two" vote-getters will appear on the general election ballot. For example, if seven candidates carrying the Party name each receive 10% of the vote at a partisan primary, and two candidates of other parties each receive 15%, the Secretary maintains there would be no Party candidate on the general election ballot, despite the receipt by candidates carrying the Party's identification of 70% of the total vote.

DENIAL OF EQUAL PROTECTION OF LAWS

22. In contrast to the State's invasion of the associational rights of the Party and its adherents by denying their right to nominate candidates, minor parties are expressly authorized to nominate candidates through a convention process under RCW 29A.20.121.

23. The State also affords minor political parties a mechanism to protect themselves from individuals or groups who attempt to hijack the party name or force an association with the minor political party. RCW 29A20.171(1) recognizes that there can be only one nominee of a minor political party. RCW 29A.20.171(2) provides for "a judicial determination of the right to the name of a minor political party." The Defendants intend to administer the State's partisan primary in a manner that denies the Party the right to nominate its candidates and control the use of its name. In doing so, the State protects the First Amendment right of association to minor political parties and their adherents while denying the same protection to the Party and its adherents.

DEMOCRATIC PARTY OF WASHINGTON V. REED

24. In *Reed*, the Ninth Circuit held that Washington cannot force a political party and its adherents to adulterate their nomination process. The *Reed* decision overturned Washington's blanket primary system, which -- like I-872 -- prevented the Party from controlling its own nomination process. The court, rejecting a litany of "compelling interests" advanced by the State to justify the invasion of political parties' First Amendment rights, stated that "[t]he remedy available to the Grangers and the people of the State of Washington for a party that nominates candidates carrying a message adverse to their interests is to vote for someone else, not to control whom the party's adherents select to carry their message." *Reed*, 343 F.3d at 1206-1207.

25. In *Jones*, the Supreme Court noted that forced political association violates the principles set forth in its earlier cases by forcing "political parties to associate with—to have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival." Jones, 530 U.S. at 577. The Supreme Court also noted that

> a corollary of the right to associate is the right not to associate. Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.

> In no area is the political association's right to exclude more important than in the process of selecting its nominee.

530 U.S. at 574-575. (citations and quotation marks omitted). The Ninth Circuit's *Reed* decision followed the Supreme Court's *Jones* decision. See *Reed* 343 F.3d at 1201.

26. There is no constitutionally significant difference between Washington's new "People's Choice" primary system and the previous blanket primary system, which was held unconstitutional by the Ninth Circuit. Indeed, the voter's pamphlet statement prepared by I-872's proponents stated that "I-872 will restore the kind of choice in the primary that voters enjoyed for seventy years with the blanket primary."

DEPRIVATION OF CIVIL RIGHTS BY STATE OFFICIALS UNDER COLOR OF LAW

27. The Party has adopted rules governing the nomination of its candidates and prohibiting candidates not qualified under Party rules to represent themselves as candidates of the Party. The Party has provided those rules to the County Auditors.

28. The conduct of any partisan primary by State officials through the County Auditors without implementation of an effective mechanism for the Party to exercise its right to limit participation in connection with that primary to adherents of the Party is action by those officials under law and color of law that deprives Plaintiffs of their civil rights.

29. If the County Auditors are permitted to conduct a "qualifying" partisan primary with multiple "Republican" candidates listed and not chosen by the Party, plaintiffs will be irreparably harmed by the denial of their First Amendment rights. Moreover, if the County Auditors conduct partisan primaries pursuant to procedures which are known to be unconstitutional, then there is a substantial risk that the results of those primaries will be invalid.

FIRST CAUSE OF ACTION: CONDUCTING AN INVALID PRIMARY

30. Plaintiffs reallege and incorporate by reference Paragraphs 1-29 above.

31. An actual controversy exists between Plaintiffs and Defendants with regard to the exercise of Plaintiffs' federally protected rights. Plaintiffs are entitled to declaratory judgment establishing the unconstitutionality of the State's primary system.

32. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the County Auditors to permit non-affiliates of the Party to participate in the Party's nominee selection process.

33. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the Secretary and County Auditors to facilitate cross-over voting and ticket-splitting by placing Republican primary races on the same ballot as primary races for other political parties or affiliations over the objection of the Party and

without requiring mechanisms to prevent voting in violation of the Party's associational rights.

34. Initiative 872 lacks a severability clause. Therefore, if any portion of I-872 is unconstitutional, the entire enactment is void.

35. Pursuant to 42 U.S.C. § 1983 *et seq.*, Plaintiffs are entitled to a declaratory judgment regarding their rights under the First Amendment and to their reasonable attorneys' fees and costs in this case.

SECOND CAUSE OF ACTION: FORCED ASSOCIATION

36. Plaintiffs reallege and incorporate by reference Paragraphs 1-35 above.

37. RCW 29A.24.030, RCW 29A.24.031 and RCW 29A.36.010 are unconstitutional under the First Amendment to the extent that they permit the State to compel the Party during a primary to publicly affiliate with candidates other than those who are qualified under Party rules to represent themselves as candidates of the Party.

38. The State's primary system, including RCW 29A.36.170, is unconstitutional under the First Amendment to the extent that it places upon the general election ballot as a candidate of the Party for any office the name of an individual who has been selected though a voting system that deprives the Party of the ability to limit participation in nominee selection to those the Party has determined should be included.

THIRD CAUSE OF ACTION: DENIAL OF EQUAL PROTECTION UNDER LAW

39. Plaintiffs reallege and incorporate by reference Paragraphs 1-38.

40. The State, through RCW 29A.20.171, protects minor political parties from forced association with candidates who may not share the goals or objectives of the minor political parties and their adherents. Through the convention process and the statutory procedures to resolve competing claims to the use of a minor political party's name, that party and its adherents may prevent misrepresentations of affiliation on primary ballots prepared by the Defendants. The State discriminates among political parties by providing a mechanism for minor political parties to protect themselves from forced affiliation with candidates, but denying the same right to the Party and its adherents under RCW 29A.24.030 and RCW 29A.24.031.

41. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983 *et seq.*

SECOND FOURTH CAUSE OF ACTION: INJUNCTIVE RELIEF

42. Plaintiffs reallege and incorporate by reference Paragraphs 1-41 above.

43. There exists an imminent and ongoing threat by the County Auditors to deprive Plaintiffs of their civil rights by requiring Plaintiffs to select the candidates and nominees of the Party through a primary process in which Plaintiffs are not permitted

to exercise their First Amendment rights of association.

44. Plaintiffs will suffer irreparable injury if the Party's candidates and nominees are selected in a process in which the Party is deprived of its right to define participation.

45. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining the County Auditors from:

a) conducting any partisan primary without affording the Party reasonable opportunity in advance of that primary to exercise its right to define participation in that primary;

b) conducting any partisan primary without implementing a reasonable mechanism to effectuate the Party's right to select the candidates who will carry the Party's name in that primary;

c) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the Party for that primary; and

d) placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party;

46. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983 *et seq.*

PRAYER FOR RELIEF

Plaintiffs respectfully request the Court enter judgment:

1. Declaring RCW 29A.04.127 unconstitutional;

2. Declaring RCW 29A..24.030 and RCW 29A24.031 unconstitutional to the extent they authorize placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party;

3. Declaring RCW 29A.36.010 unconstitutional;

4. Declaring RCW 29A.36.170 unconstitutional;

5. Declaring RCW 29A.52.112 unconstitutional;

6. Declaring Initiative 872 unconstitutional and declaring that the primary system in effect immediately before the passage of I-872 remains in effect;

7. Permanently restraining the County Auditors and all those acting in active concert and participation with them from:

a) conducting any partisan primary without affording the Party reasonable opportunity in advance of that primary to exercise its right to define participation in that primary;

b) conducting any partisan primary without implementing a reasonable mechanism to

effectuate the right to select the candidates who will carry the Party's name in that primary;

c) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the Party for that primary; and

d) placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party.

8. Awarding Plaintiffs their reasonable attorneys' fees and costs; and

9. Granting such further relief as the Court deems appropriate.

DATED this 19th day of May, 2005.

LIVENGOOD, FITZGERALD
& ALSKOG, PLLC

John J. White, Jr.

By: _____
John J. White, Jr., WSBA #13682
Kevin B. Hansen, WSBA #28349
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY; CHRISTOPHER VANCE; BERTABELLE HUBKA; STEVE NEIGHBORS; BRENT BOGER; MARCY COLLINS; and MICHAEL YOUNG, Plaintiffs, and WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE; and PAUL BERENDT, Plaintiffs in Intervention, v. DEAN LOGAN, King County Records & Elections Division Manager; BOB TERWILLIGER, Snohomish County Auditor; VICKY DALTON, Spokane County Auditor; GREG KIMSEY, Clark County Auditor; CHRISTINA SWANSON, Cowlitz County Auditor; VERN SPATZ, Grays Harbor County Auditor; PAT GARDNER, Pacific County Auditor; DIANE L. TISCHER, Wahkiakum County Auditor; and DONNA M. ELDRIDGE, Jefferson County Auditor, Defendants,	No: C05 0927 WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE'S MOTION TO INTERVENE AS PLAINTIFF **Noted for Consideration: June 3, 2005**

Pursuant to Fed.R.Civ.P. 24(a) and (b), the Washington State Democratic Central Committee

(the "Party") and its Chair, Paul Berendt, move to intervene in the above-entitled action.

This lawsuit seeks a declaration that Washington's "top two" primary statute unconstitutionally impairs the First Amendment associational rights of political parties to decide for themselves who may represent them in partisan elections. As a practical matter, this suit will determine the scope of the Washington Democratic Central Committee's associational rights to select its own candidates for public office. Therefore, the Party has a fundamental interest in the outcome of this case and is entitled to intervene as of right. Fed.R.Civ.P. 24(a) (Intervention of Right allowed when the movant "claims an interest relating to the ... subject of the action" and the "disposition of the action may as a practical matter impair or impede his ability to protect that interest[.]"); *see also Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (Rule 24(a) construed broadly and in favor of applicants); *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993) (whether movant has an adequate interest in the action is a "practical, threshold inquiry."). As the Advisory Committee Notes to Fed.R.Civ.P. 24(a) make clear: "If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene."

Alternatively, the Washington State Democratic Central Committee is similarly situated with plaintiff the Washington State Republican Party. The Party therefore has claims against the defendants that share common questions of law and

fact. The Court should allow permissive intervention pursuant to Fed.R.Civ.P. 24(b) (Permissive Intervention allowed when the movant's "claim or defense and the main action have a question of law or fact in common.").

Counsel for the Plaintiff in Intervention has conferred with Plaintiff, the Washington State Republican Party, through its counsel. The Plaintiff has indicated that they will have no opposition to the Motion to Intervene. We respectfully request that the Court allow the Washington State Democratic Central Committee and its Chair, Paul Berendt, to Intervene and represent their interests in this matter.

We have attached herewith a Complaint in Intervention as Exhibit A. We request that the Complaint in Intervention be accepted for filing and service on the other parties to this action. This Complaint substantially mirrors the Complaint already on file.

DATED this 19th day of May, 2005.

PRESTON GATES & ELLIS LLP

David T. McDonald

By _____

David T. McDonald, WSBA #5260
Jay Carlson, WSBA # 30411
Attorneys for Plaintiffs in Intervention,
Washington State Democratic
Party and Paul R. Berendt, Chair

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY; CHRISTOPHER VANCE; BERTABELLE HUBKA; STEVE NEIGHBORS; BRENT BOGER; MARCY COLLINS; and MICHAEL YOUNG,

Plaintiffs,

and

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE; and PAUL BERENDT,

Plaintiffs in Intervention,

v.

DEAN LOGAN, King County Records & Elections Division Manager; BOB TERWILLIGER, Snohomish County Auditor; VICKY DALTON, Spokane County Auditor; GREG KIMSEY, Clark County Auditor; CHRISTINA SWANSON, Cowlitz County Auditor; VERN SPATZ, Grays Harbor County Auditor; PAT GARDNER, Pacific County Auditor; DIANE L. TISCHER, Wahkiakum County Auditor; and DONNA M. ELDRIDGE, Jefferson County Auditor,

Defendants,

No: C05 0927

COMPLAINT IN INTERVENTION FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872 AND PRIMARY ELECTIONS

NATURE OF ACTION

1. The First and Fourteenth Amendments to the United States Constitution guarantee the right of individuals to associate in a political party, the right of that party to select its nominees for partisan political office, and the right of the individuals and their party to limit participation in the process of selecting nominees to those voters the party identifies as sharing its interests and persuasions. As the Ninth Circuit noted in striking down Washington's blanket primary, "... the Washington statutory scheme prevents those voters who share their affiliation from selecting their party's nominees. The right of people adhering to a political party to freely associate is not limited to getting together for cocktails and canapés. Party adherents are entitled to associate to choose their party's nominees for public office." *Democratic Party of Washington v. Reed*, 343 F.3d 1198, 1204 (9th Cir. 2003), *cert. denied*, 540 U.S. 1213 (2004) ("*Reed*").

2. One of the fundamental purposes of the First Amendment is to provide for and promote competition between ideas in American civilization. This purpose is advanced by requiring that the selection of a political party's candidates and nominees be done by adherents of the party rather than by those opposed to or indifferent to the party.

3. The State of Washington (the "State") has enacted Initiative 872, attempting to prevent the Washington State Democratic Party (the "Party") and its adherents from selecting their nominees, and to force the Party to be associated publicly with candidates who have not been nominated by the

Party, who will alter the political message and agenda the Party seeks to advance, and who will confuse the voting public with respect to what the Party and its adherents stand for. The State seeks to appropriate the use of the Democratic Party's name in primaries and general elections in order to protect the political interests of the incumbent and the well-known at the expense of the committed and the innovative. Acting under color of law, State and local officials force the Party and its adherents to include supporters of other parties and political interests in determining which, or whether any, candidate will carry the Democratic Party name in the general election.

4. Initiative 872, as set forth in both Section 2 ("In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective....") and Section 18, was expressly intended to defeat the constitutional right of the Party and its adherents to nominate candidates, recognized by the U.S. Supreme Court in *California Democratic Party v. Jones*, 530 U.S. 567, 120 S.Ct. 2402, 147 L. Ed. 2d 502 (2000) and *Reed*. The Initiative, as implemented by State officials, eliminates mechanisms previously enacted by the State to protect the First Amendment rights of the Party and its adherents and provides no effective substitute mechanism for the Party to exercise its right to limit participation in the nomination process and thereby protect its adherents' right of association from forced dilution.

5. This is an action to protect the First Amendment rights of the Party and its adherents to advocate and promote their vision for the future

without subtle or overt censorship or interference by the State through the County Auditors acting under color of the laws of the State of Washington. Initiative 872 is unconstitutional.

JURISDICTION AND VENUE

6. Plaintiffs' rights of political association and political expression are guaranteed against abridgement by the State and those acting under color of its laws by the First and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983. This case presents a federal question involving federally-protected rights, including freedom of association and protection against state intervention into the association rights of the Party and its adherents, set out in *Reed*. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1343(a)(3), 2201 and 2202.

7. Defendants reside in the Western District of the State of Washington (the "Western District") and the conduct and threatened conduct that gives rise to Plaintiffs' claims substantially occurred and threatens to occur within the Western District. Venue for this action lies within the Western District pursuant to 28 U.S.C. §§ 1391(a) and 1391(b).

PARTIES

Plaintiffs

8. The Party is a "major political party" as defined in RCW 29A.04.086 and is organized for the purposes of promoting the political beliefs of its adherents, selecting and supporting candidates who support the political beliefs of the Party's adherents

and electing public officials who will conduct government affairs in a manner consistent with the Party's philosophy. The Party has all the powers inherent in a political organization and is empowered to perform all functions inherent in a political party.

9. Intervenor-Plaintiff Paul Berendt is a resident of the Western District. He is the elected Chairman of the Washington State Democratic Central Committee, the governing body of the Party pursuant to its Charter, and is the political and administrative head of the Party pursuant to its Charter and Bylaws and RCW 29A.80.020, *et seq.*

10. Defendant Dean Logan, King County Records & Elections Division Manager and Bob Terwilliger, Snohomish County Auditor, Vicky Dalton, Spokane County Auditor, Greg Kimsey, Clark County Auditor, Christina Swanson, Cowlitz County Auditor, Vern Spatz, Grays Harbor County Auditor, Pat Gardner, Pacific County Auditor and Diane L. Tischer, Wahkiakum County Auditor (the "County Auditors") are election officers in the State, having the overall responsibility under RCW 29A.04.025 to conduct primary elections within their respective counties, of primary elections and are responsible, consistent with the rules established by the Secretary, to provide and tabulate ballots for such elections. The County Auditors, except Vicky Dalton, reside in the Western District of Washington.

WASHINGTON'S PARTISAN PRIMARY

11. The Defendants will administer partisan primaries this September. Pursuant to the laws of the State, including RCW 29A.04.311,

29A.20.121, and 29A.52.116, the Party is required to advance its candidates for Congressional, State and County offices by means of partisan political primaries administered by the Secretary of State ("the Secretary") and the County Auditors. RCW 29A.52.116 states: "Major political party candidates for all partisan elected offices, except for president and vice-president ... must be nominated at primaries held under this chapter." The mandatory notice of the primary must contain "the proper party designation" of each candidate in the primary. RCW 29A.52.311. RCW 29A.52.112, adopted by I-872, requires that "For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots ...." The same statute also provides that the "top two" vote-getters in the primary will advance to the general election. The Secretary has asserted that only the two candidates who receive the most votes will on primary day will advance to the primary even if both candidates are associated with the same political party. Defendants Logan and Terwilliger have each asserted, "At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary."

12. Neither the laws of the State nor the rules adopted or proposed by the Secretary provide any mechanism for the Party to effectively exercise its right of association in connection with the partisan primary in which it is forced by State law to participate. Any individual may appropriate the

Party's name, regardless of whether the Party desires affiliation with that person.

13. The State, through its filing statute, compels the Party to associate with any person who files a declaration of candidacy expressing a "preference" for the Party, regardless whether the Party desires association with the person.

14. In addition to requiring the Party to accept as its candidate any individual without regard to the individual's political philosophy or participation in Party affairs, RCW 29A.04.127 forces the Party to permit any voter to participate in selection of the Party's standard-bearer without regard to the voter's partisan affiliation or beliefs. The State thus forces the Party and its adherents to associate with those who do not share their beliefs or are openly antagonistic to them. Initiative 872 was intended to establish *a de facto* blanket primary in response to a declaration that the blanket primary is unconstitutional and to facilitate cross-over and ticket-splitting voting, thus depriving the Party of its right to prevent supporters of other political parties and interests from participating in its candidate selection and nomination processes. It was intended to force the Party to modify its message or have a modified message forced upon it by the simple expedient of eliminating the Party's selected spokesperson in favor of a spokesperson selected by non-adherents of the Party. The sponsors' official statement in support of the Initiative states, "Parties will have to recruit candidates with broad public support and run campaigns that appeal to all voters." This attempt at forced message modification was rejected as a legitimate state interest by both

the Supreme Court in *Jones* and the Ninth Circuit in *Reed*.

15. The other interests asserted as the basis for adopting I-872, codified as RCW 29A.04.206, were also rejected in *Reed* as legitimate grounds for invading the right of political association.

16. The Party and its adherents are irreparably injured by the forced adulteration of the Party's nomination process, by the State's active encouragement of cross-over and ticket-splitting, and by the resulting dilution and potential suppression of its message. The presence and participation of non-party voters in the partisan primary inevitably alters candidates' messages and actions and thereby dilutes the Party's message and influence. Dilution of the Party's vote in any partisan primary carries with it the risk that the Party will be denied a place on the general election ballot to the extent that only the "top two" vote-getters will appear on the general election ballot. For example, if seven candidates carrying the Party name each receive 10% of the vote at a partisan primary, and two candidates of other parties each receive 15%, the Secretary maintains there would be no Party candidate on the general election ballot, despite the receipt by candidates with the Party's identification or 70% of the total vote.

DENIAL OF EQUAL PROTECTION OF LAWS

17. In contrast to its invasion of the associational rights of the Party, by denying a right to nominate candidates, the State expressly authorizes minor parties to nominate candidates through a convention process. RCW 29A.20.121

provides, "Any nomination of a candidate for partisan public office by other than a major political party may be made only in a convention ...." (internal punctuation omitted).

18. The State also affords minor political parties a mechanism to protect themselves from individuals or groups who attempt to hijack the party name or force an association with the minor political party. RCW 29A20.171(1) recognizes that there can be only one nominee of a minor political party. RCW 29A.20.171(2) provides for "a judicial determination of the right to the name of a minor political party ...." The Defendants intend to administer the State's partisan primary in a manner that denies the Party the right to nominate its candidates and the right to its name. In doing so, the State improperly protects the First Amendment right of association to minor political parties and their adherents, but denies the same protection to Plaintiffs.

DEMOCRATIC PARTY OF WASHINGTON V. REED

19. In *Reed*, the Ninth Circuit held that Washington cannot force a political party and its adherents to adulterate their nomination process. The *Reed* decision overturned Washington's blanket primary system, which -- like I-872 -- prevented the Party from controlling its own nomination process. The court, rejecting a litany of "compelling interests" advanced by the State to justify the invasion of First Amendment rights, stated that "[t]he remedy available to the Grangers and the people of the State of Washington for a party that nominates candidates

carrying a message adverse to their interests is to vote for someone else, not to control whom the party's adherents select to carry their message." *Reed*, 343 F.3d at 1206-1207.

20. In *Jones*, the Supreme Court noted that forced political association violates the principles set forth in earlier cases, by forcing "political parties to associate with—to have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival." 530 U.S. at 577. The Supreme Court also noted that "a corollary of the right to associate is the right not to associate. 'Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.' In no area is the political association's right to exclude more important than in the process of selecting its nominee." 530 U.S. at 574-575 (citations omitted). The Ninth Circuit decision followed the U.S. Supreme Court decision in *California Democratic Party v. Jones*, 530 U.S. 567 (2000). *Reed*, 343 F.3d at 1201.

21. There is no constitutionally significant difference between Washington's previous blanket primary system held unconstitutional by the Ninth Circuit and the "People's Choice" primary system. Indeed, the voter's pamphlet statement prepared by I-872's proponents stated that "I-872 will restore the kind of choice in the primary that voters enjoyed for seventy years with the blanket primary."

DEPRIVATION OF CIVIL RIGHTS BY STATE OFFICIALS UNDER COLOR OF LAW

22. The Washington State Democratic Central Committee has adopted rules governing the nomination of its candidates and prohibiting candidates not qualified under Party rule to represent themselves as candidates or the Party. The Party has provided those rules to the Defendants.

23. The conduct of any partisan primary by State officials without implementation of an effective mechanism for the Party to exercise its right to limit participation in connection with that primary to adherents of the Party is action by those State officials under law and color of law that deprives Plaintiffs of their civil rights.

24. If the County Auditors are permitted to conduct a "qualifying" partisan primary with multiple "Democratic" candidates listed and not chosen by the Party, plaintiffs will be denied their First Amendment rights and will be irreparably injured. Moreover, if the State conducts partisan primaries pursuant to procedures which are known to be unconstitutional, then there is a substantial risk that the results of those primaries will be invalid.

FIRST CAUSE OF ACTION: CONDUCTING AN INVALID PRIMARY

25. Plaintiffs reallege and incorporate by reference Paragraphs 1-24.

26. An actual controversy exists between Plaintiffs and Defendants with regard to the exercise of Plaintiffs' federally protected rights. Plaintiffs are entitled to declaratory judgment establishing the unconstitutionality of the State's primary system.

27. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the County Auditors to permit non-affiliates of the Party to participate in the Party's nominee selection process.

28. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the Secretary and County Auditors to facilitate cross-over voting and ticket-splitting by placing Democratic primary races on the same ballot as primary races for other political parties or affiliations over the objection of the Party and without requiring mechanisms to prevent voting in violation of the Party's associational rights.

29. Initiative 872 lacks a severability clause. Therefore, if any portion of I-872 is unconstitutional, the entire enactment is void.

30. Pursuant to 42 U.S.C. § 1983, *et seq.*, Plaintiffs are entitled to a declaratory judgment regarding their rights under the First Amendment and to their reasonable attorneys' fees and costs in this case.

SECOND CAUSE OF ACTION: FORCED ASSOCIATION

31. Plaintiffs reallege and incorporate by reference Paragraphs 1-30.

32. RCW 29A.24.030, RCW 29A.24.031 and RCW 29A.36.010 are unconstitutional under the First Amendment to the extent that they permit the State to compel the Party during a primary to publicly affiliate with candidates other than those who are qualified under Party rules to represent themselves as candidates of the Party.

33. The State's primary system, including RCW 29A.36.170, is unconstitutional under the First Amendment to the extent that it places upon the general election ballot as a candidate of the Party for any office the name of an individual who has been selected though a voting system that deprives the Party of the ability to limit participation in nominee selection to those the Party has determined should be included.

THIRD CAUSE OF ACTION: DENIAL OF EQUAL PROTECTION UNDER LAW

34. Plaintiffs reallege and incorporate by reference Paragraphs 1-33.

35. The State, through RCW 29A.20.171, provides protection for minor political parties from forced association with candidates who may not share the goals or objectives of the minor political party and its adherents. Through the convention process and the statutory procedures to resolve competing claims to the use of a minor political party's name, those parties and their adherents may prevent misrepresentations of affiliation on primary ballots prepared by the Defendants. The State discriminates among political parties by providing a mechanism for minor political parties to protect themselves from forced affiliation with candidates,

but denying the same right to the Party and its adherents under RCW 29A.24.030 and RCW 29A.24.031 by permitting any person to represent himself or herself as a candidate of the Party.

36. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983, *et seq.*

FOURTH CAUSE OF ACTION: INJUNCTIVE RELIEF

37. Plaintiffs reallege and incorporate by reference Paragraphs 1-36.

38. There exists an imminent and ongoing threat by State officials to deprive Plaintiffs of their civil rights by requiring Plaintiffs to select the candidates and nominees of the Party through a primary process in which Plaintiffs are not permitted to exercise their First Amendment rights of association and exclusion.

39. Plaintiffs will suffer irreparable injury if the Party's candidates and nominees are selected in a process in which the Party is deprived of its right to define participation.

40. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining State officials from:

a) conducting any partisan primary without affording the Party reasonable opportunity in advance of that primary to exercise its right to define participation in that primary;

b) conducting any partisan primary without implementing a reasonable mechanism to effectuate the Party's exercise of its right to select the candidates who participate in that primary associated with the Party's name;

c) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the Party for that primary;

d) placing on a primary ballot the name of any candidate in association with the Party who has not qualified under the rules of the Party to stand for office as a candidate of the Party.

41. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983, *et seq.*

PRAYER FOR RELIEF

Plaintiffs respectfully request the Court enter judgment:

1. Declaring RCW 29A.04.127 unconstitutional;

2. Declaring RCW 29A..24.030 and RCW 29A24.031 unconstitutional to the extent they authorize placing on a primary ballot the name of any candidate in association with the Party who has not qualified under the rules of the Party to stand for office as a candidate of the Party;

3. Declaring RCW 29A.36.010 unconstitutional;

4. Declaring RCW 29A.36.170 unconstitutional;

5. Declaring RCW 29A.52.112 unconstitutional;

6. Declaring Initiative 872 unconstitutional and declaring that the primary system in effect immediately before the passage of I-872 remains in effect;

7. Permanently restraining the County Auditors and all those acting in active concert and participation with them from:

a) conducting any partisan primary without affording the Party reasonable opportunity in advance of that primary to exercise its right to define participation in that primary;

b) conducting any partisan primary without implementing a reasonable mechanism to effectuate the Party's exercise of its right to select the candidates who participate in that primary associated with the Party's name;

c) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the Party for that primary;

d) placing on a primary ballot the name of any candidate in association with the Party who has not qualified under the rules of the Party to stand for office as a candidate of the Party.

8. Awarding Plaintiffs their reasonable attorneys' fees and costs; and

9. Granting such further relief as the Court deems appropriate.

DATED this ____ day of June, 2005.

PRESTON GATES & ELLIS LLP

By David T. Mcdonald
David T. McDonald, WSBA #5260
Jay Carlson, WSBA # 30411
Attorneys for Plaintiffs in Intervention, Washington State Democratic Party and Paul R. Berendt, Chair

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, CHRISTOPHER VANCE, BERTABELLE HUBKA, STEVE NEIGHBORS, BRENT BOGER, MARY COLLINS, MICHAEL YOUNG,

Plaintiffs,

v.

DEAN LOGAN, King County Records & Elections Division Manager; BOB TERWILLIGER, Snohomish County Auditor; VICKY DALTON, Spokane County Auditor, GREG KIMSEY, Clark County Auditor, CHRISTINA SWANSON, Cowlitz County Auditor, VERN SPATZ, Grays Harbor County Auditor, PAT GARDNER, Pacific County Auditor, DIANE L. TISCHER, Wahkiakum County Auditor, DONNA ELDRIDGE, Jefferson County Auditor,

Defendants,

WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, PAUL BERENDT,

Proposed Intervenors,

LIBERTARIAN PARTY OF WASHINGTON STATE, RUTH BENNETT and J. S. MILLS,

Proposed Intervenors.

Case No: CV05-0927

MOTION TO INTERVENE

NOTE ON MOTION CALENDAR:

June 10, 2005

Pursuant to Fed.R.Civ.P. 24(a), the Libertarian Party of Washington State (the "LP"), its Chair, Ruth Bennett, and a member, J.S. Mills, move to intervene in the above-entitled action.

The Libertarian Party has a claim against the above named defendants involving the same core of facts and questions of law as in the original action by the Plaintiffs. This motion is not brought for improper purpose, and will not unduly prejudice the current parties to this action. The substance of the Libertarian Party's claim is outlined in the proposed Complaint to Intervene, attached to this Motion.

The underlying lawsuit seeks a declaration that Initiative 872, Washington's new primary system, unconstitutionally impairs the associational rights of political parties to decide who may represent them in elections for partisan office. This suit will determine the scope of the LP's associational rights to select its own candidates for public office. Therefore, the LP has a fundamental interest in the outcome of this case and is entitled to intervene as of right.

Although the LP shares many of the same First Amendment claims and rights in this suit with the Plaintiffs and the other Plaintiffs in Intervention, the LP has distinct but nonetheless inextricably related Fourteenth Amendment claims and rights. The LP is a "minor" political party under Washington law and is thus entitled to different considerations regarding access to the general

election ballot. This suit may determine whether a state may limit access to the general election to only two candidates, thus virtually eliminating access to the general election ballot for third party and independent candidates, and possibly resulting in expenditure of public funds to accomplish the private purposes of the major political parties.

Counsel for the Plaintiff in Intervention has conferred with the Plaintiffs and the other Plaintiffs in Intervention, but has not conferred with the Defendants to this action. Nonetheless this counsel anticipates no opposition to this Motion to Intervene. We respectfully request that the Court allow the Libertarian Party of Washington State (the "LP"), its Chair, Ruth Bennett, and a member, J.S. Mills, to Intervene and represent their interests in this matter.

Fed.R.Civ.P. 24(a) (Intervention of Right allowed when the movant "claims an interest relating to the ... subject of the action" and the "disposition of the action may as a practical matter impair or impede his ability to protect that interest..."); see also, *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392 (9th Cir. 1995) (Rule 24(a) construed broadly and in favor of applicants); *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993) (whether movant has an adequate interest in the action is a "practical, threshold inquiry.").

We have attached hereto a Complaint to Intervene. (Exhibit A) We request that the

Complaint be accepted for filing and service on the other parties to this action.

DATED Thursday, May 19, 2005, at Tacoma, Washington.

SHEPARD LAW OFFICE, INC.,

Richard Shepard

RICHARD SHEPARD, WSBA # 16194
Attorney for Proposed Intervenors
LIBERTARIAN PARTY OF
WASHINGTON STATE, RUTH
BENNETT, and J. S. MILLS

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, CHRISTOPHER VANCE, BERTABELLE HUBKA, STEVE NEIGHBORS, BRENT BOGER, MARY COLLINS, MICHAEL YOUNG,

Plaintiffs,

v.

DEAN LOGAN, King County Records & Elections Division Manager; BOB TERWILLIGER, Snohomish County Auditor; VICKY DALTON, Spokane County Auditor, GREG KIMSEY, Clark County Auditor, CHRISTINA SWANSON, Cowlitz County Auditor, VERN SPATZ, Grays Harbor County Auditor, PAT GARDNER, Pacific County Auditor, DIANE L. TISCHER, Wahkiakum County Auditor, DONNA ELDRIDGE, Jefferson County Auditor,

Defendants,

WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, PAUL BERENDT,

Proposed Interveners,

LIBERTARIAN PARTY OF WASHINGTON STATE, RUTH BENNETT and J. S. MILLS,

Proposed Interveners.

Case No: CV05-0927

[Proposed]

LIBERTARIAN PARTY'S COMPLAINT TO INTERVENE FOR DECLARATORY JUDGMENT AND OTHER RELIEF

SUMMARY OF ACTION

This is an action to protect the First and Fourteenth Amendment rights of the LP and its adherents to assure access to the general election ballot for their nominated candidates and to advocate and promote their vision for the future without subtle or overt censorship or interference by the State through the County Auditors acting under color of the laws of the State of Washington. Initiative 872, the subject of challenge, is unconstitutional.

The Libertarian Party of Washington State ("the LP") seeks to intervene in the above entitled action to ensure its interests are properly and timely represented to this court. Initiative 872, adopted by Washington State voters in November 2004, was expressly intended to defeat the constitutional right of the LP and its adherents to nominate candidates without outside interference as recognized in *California Democratic Party v. Jones* 530 U.S. 567, 120 S.Ct. 2402, 147 L. Ed. 2d 502 (2000)(*"Jones"*) and *Democratic Party of Washington v. Reed*, 343 F.3d 1198, 1204 (9th Cir. 2003) *cert. denied* 540 U.S. 1213 (2004) (*"Reed"*). I-872 accomplishes this by claiming that the primary does not "nominate" candidates, but rather "qualifies" them for the general election ballot. However, the partisan nature of the primary remains under I-872 and the political parties are deprived of their rights to nominate their own standard bearers.

Consequently I-872 deprives the LP of its ability to determine the political message it wishes to bring to the voters and further adds to voter

confusion by removing assurances that the LP label actually means something. I-872 thus violates the LP's First Amendment rights of expressive association and ultimately impoverishes the guarantees afforded by the First Amendment to the voters.

More specifically, emergency rules implemented by the Washington Secretary of State on May 18, 2005, allegedly to implement I-872, administratively "repeal" statutes expressly authorizing the LP to nominate its candidates by way of convention. Moreover, I-872 allows any candidate regardless of the nature of his/her relationship to the LP or its philosophy to use the "Libertarian" label when running for office.

Further, by allowing only two candidates to appear on the general election ballot I-872 erects a constitutionally impermissible standard for minor party and independent candidate access to the general election ballot. I-872 thus violates the LP's Fourteenth Amendment right to access to the general election ballot.

COMPLAINT

PARTIES

1. The Libertarian Party of Washington State ("the LP") is a political party organized in 1972 for the purposes of promoting the political beliefs of its members, electing public officers who are members of the Libertarian Party, and in advocating principles and policies for operation of government affairs consistent with the libertarian philosophy.

2. Ruth Bennett is a resident of the Western District of Washington and is Chair of the Libertarian Party of Washington State, elected pursuant to its Constitution and Bylaws. Ms. Bennett is the former Libertarian candidate for governor in the 2004 election and a qualified elector within the state of Washington.

3. J.S. Mills is a resident of the Western District of Washington and a member of the Libertarian Party. Mr. Mills is a former Chair of the Libertarian Party of Washington State, a former Libertarian candidate for U.S. Senator in the 2004 election, a likely candidate for U.S. Senator in the 2006 election and a qualified elector within the state of Washington.

4. Defendant Dean Logan, King County Records & Elections Division Manager and Bob Terwilliger, Snohomish County Auditor, Vicky Dalton, Spokane County Auditor, Greg Kimsey, Clark County Auditor, Christina Swanson, Cowlitz County Auditor, Vern Spatz, Grays Harbor County Auditor, Pat Gardner, Pacific County Auditor, Diane L. Tischer, Wahkiakum County Auditor and Donna Eldridge, Jefferson County Auditor, (the "County Auditors") are election officers in the State, having the overall responsibility under RCW 29A.04.025 to conduct primary elections within their respective counties, of primary elections and are responsible, consistent with the rules established by the Secretary, to provide and tabulate ballots for such elections.

The County Auditors, except Vicky Dalton, reside in the Western District of Washington. Ms. Dalton resides in the Eastern District.

JURISDICTION AND VENUE

5. This case presents a federal question related to the federal constitutional rights of persons residing within the Western District and other parts of Washington. This court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 2201 and 2202.

6. Venue properly lays before this court under 28 U.S.C. § 1391.

FACTS

7. The First and Fourteenth Amendments of the United States Constitution guarantee individuals the right to associate in a political party, the right of a party to select its nominees for public office, the right of a party to determine the basis of selection and the right, upon a minimal showing of support, of access to the general election ballot.

8. Initiative 872, as set forth in both Section 2 ("In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective....") and Section 18, was expressly intended to defeat the constitutional right of the LP and its adherents to nominate candidates, recognized by the U.S. Supreme Court in *Jones, supra,* and *Reed, supra.*

9. Under Initiative 872, as interpreted by the Secretary of State and implemented by the

County Auditors, the primary is the only means by which the LP can advance its candidates to the general election ballot. However, RCW 29A.52.112, adopted under I-872, states: "For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots ...." The same statute also provides that the "top two" candidates receiving the most votes will advance to the general election. The Secretary has asserted that this means the top two candidates advance whether or not they are the same political party.

10. I-872 was intended to force the LP to modify its message. The sponsors' official statement in support of the Initiative states, "Parties will have to recruit candidates with broad public support and run campaigns that appeal to all voters." This attempt at forced message modification was rejected as a legitimate state interest by both the Supreme Court in *Jones* and the Ninth Circuit in *Reed*.

11. There is no material First Amendment difference between Initiative 872 and Washington's previous blanket primary system held unconstitutional by the Ninth Circuit. Indeed, the voter's pamphlet statement prepared by I-872's proponents stated "I-872 will restore the kind of choice in the primary that voters enjoyed for seventy years with the blanket primary."

12. Initiative 872 was explicitly intended to re-establish a partisan primary that facilitates cross-over and ticket-splitting voting, much like the "blanket primary" invalidated in *Reed*. While the circumstances of a particular election cycle may recommend cross-over votes or ticket splitting to the LP, the right to choose whether to allow it is a clear First Amendment right reserved to the LP. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed.2d 514, (1986), *Beaver v. Clingman*, 363 F.3d 1048, 120 A.L.R.5th 707 (10th Cir. 2004), *cert. granted*, 125 S.Ct. 27, 159 L.Ed.2d 857, (NO. 04-37). By limiting the choices of the LP to include or exclude voters the state is depriving the LP of its First Amendment right to determine the basis of its participation in the election process.

13. Other interests asserted as the basis for adopting I-872, codified as RCW 29A.04.206, are not legitimate grounds for invading the right of political association. See, *Reed*.

14. RCW 29A.04.127 forces the LP to permit any voter to participate in selection of the LP's standard-bearer without regard to the voter's partisan affiliation or beliefs, and without the LP's permission. The State forces the LP and its adherents, without option, to associate with those who may not share their beliefs or may be antagonistic to them.

15. Historically (except for the 2002 and 2004 elections) the LP has nominated its candidates by convention as provided by prior state law.

However, on May 18, 2005, the Secretary of State adopted emergency rules allegedly to implement I-872 that effectively preempted and eliminated existing statutory mechanisms (R.C.W. §§ 29A.20.110 through 29A.20.201) for the LP to exercise its right to nominate its candidates by convention, WAC 434-215-015.

16. I-872 contained a repealer section. But R.C.W. §§29A.20.110 through 29A.20.201 were not repealed by I-872, and remain valid law. The LP's right to nominate by convention was expressly recognized by the State in the blanket primary litigation, see the trial court pleadings in *Reed, supra,* as a device to help the LP protect its message from dilution and/or disbursal of voter support.

17. The Initiative, as implemented by State officials, eliminates mechanisms previously enacted by the State to protect the First Amendment rights of the LP and its adherents and provides no effective substitute mechanism for the LP to exercise its right to limit participation in the nomination process and thereby protect its adherents' right of association from forced dilution.

18. Because the LP is smaller and not as likely to run as many candidates as the Democratic or Republican Parties, the candidacy of an "imposter" (non-member candidate running under the Libertarian banner) or "renegade" (member of the LP running under the LP banner but without compliance with internal LP nomination rules) in a highly publicized

race could result in not only dilution or suppression of the LP message, but in wholesale redefinition of the message. I-872 provides no mechanism to protect the identity of the LP or its message and opens the door to confusion among the voters as to what the LP stands for.

19. Neither the laws of the State nor the rules adopted or proposed by the Secretary provide any mechanism for the LP to effectively exercise its right of association in connection with the partisan primary in which it is forced by State law to participate. Any individual candidate may appropriate the LP's name, regardless of whether the LP desires affiliation with that person.

20. I-872 deprives the LP of its proprietary right to the use of the party name, thus leading to voter confusion regarding which candidate(s) are speaking for the party and which are imposters or renegades appropriating the party name for their own purposes. The name "Libertarian Party" is a nationally trademarked name and therefore may be used by candidates only with LP consent.

21. The risk of imposter or renegade candidates also increases the risk of splintered parties and unrestrained factionalism, which interest the US Supreme Court has deemed compelling enough to justify denying an otherwise qualified candidate a place on the general election ballot. *Storer v. Brown*, 415 U.S. 724 (U.S., 1974). There is no logical reason why an

interest articulated by a state and recognized by the Supreme Court as a compelling interest, should suddenly lose its compelling character because a political party articulates the same interest.

22. The Libertarian Party of Washington State has adopted rules governing the nomination of its candidates and prohibiting persons who are not members of the LP from indicating an affiliation with the LP when declaring a candidacy for public office.

23. The conduct of any partisan primary by State officials without implementation of an effective mechanism for the LP to exercise its right to determine participation in connection with that primary according to the rules of the LP is an action by those State officials under law and color of law that deprives Plaintiffs of their civil rights.

24. The State, through its filing statute, compels the LP to associate with any person who files a declaration of candidacy expressing a "preference" for the LP, regardless whether the LP desires association with the person or believes that person best articulates the LP's chosen temporal message for that election cycle. The LP and its adherents are irreparably injured by the forced adulteration of the LP's nomination process and the risk of diluted or disbursed support for the LP message.

25. Dilution and/or dispersal of the LP vote in any partisan primary carries with it the risk that

no LP candidate will obtain enough votes to advance to the general election ballot. For example, if six candidates carrying the LP name each receive 10% of the vote at a partisan primary, and one candidate of each of the other parties receives 20%, the Secretary maintains there would be no LP candidate on the general election ballot, despite the receipt by LP candidates of 60% of the total vote.

26. The Fourteenth Amendment equal protection and due process clauses guarantee reasonable access for minor party and independent candidates to the general election ballot. "The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot." *Williams v. Rhodes*, 393 U.S. 23, 31, 89 S.Ct. 5, 11 (1968).

27. "States may condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office." *Munro v. Socialist Workers Party*, 479 U.S. 189, 193, 107 S.Ct. 533, 536 (1986), but no state may require a minor party or independent candidate to show support of more than 5% of the voters to be placed on the general election ballot. Compare, *Rhodes, supra*, to *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554

(1971). I-872 requires the minor party or independent candidate to receive at least the second highest number of votes to advance to the general election ballot, a threshold that amounts to a moving target, dependent on the number of candidates for a particular office as well as other variables completely outside the minor party or independent candidate's control. This threshold is thus arbitrary and a denial of due process rights for LP candidates.

FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT

28. Plaintiffs reallege and incorporate by reference Paragraphs 1-27.

29. An actual controversy exists between Plaintiffs in Intervention and Defendants regarding federally protected rights. Plaintiffs are entitled to declaratory judgment establishing the unconstitutionality of the State's primary system.

30. R.C.W. § 29A.24.031 and newly promulgated WAC 434-215-015 are unconstitutional to the extent they, or either of them, allow any person who wishes to be a candidate to appropriate the Libertarian Party label without compliance with the LP nomination rules.

31. R.C.W. §§29A.20.110 through 29A.20.201 were not repealed by I-872, and remain valid law. The Secretary of State was not entitled to override them by emergency rule.

32. The LP is constitutionally entitled to nominate its standard bearers for election to public office by convention and/or caucus without substantive interference from the State and/or the Defendant County Auditors.

33. Initiative 872 is unconstitutional to the extent it deprives the LP of the right to determine who may participate in the nomination of its standard bearers.

34. Initiative 872 is unconstitutional to the extent it requires the LP to demonstrate any more than a "modicum of support" for advancing to the general election ballot.

35. Initiative 872 lacks a severability clause. Therefore, if any portion of I-872 is unconstitutional, the entire enactment is void.

36. Pursuant to 42 U.S.C. § 1983 *et seq.*, Plaintiffs in Intervention are entitled to a declaratory judgment regarding their civil rights and to their reasonable attorneys' fees and costs in this case.

SECOND CAUSE OF ACTION:
INJUNCTIVE RELIEF

37. Plaintiffs reallege and incorporate by reference Paragraphs 1-36 above.

38. There exists an imminent and ongoing threat by State officials to deprive Plaintiffs in Intervention of their civil rights by requiring Plaintiffs to select the nominees of the LP through a primary process in which Plaintiffs are not permitted to exercise their First

Amendment rights of association and exclusion.

39. Plaintiffs will suffer irreparable injury if the LP's nominee is selected in a primary in which the LP is deprived of its right to define participation in that primary.

40. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining State officials from:

a) conducting any partisan primary without affording the LP reasonable opportunity in advance of that primary to exercise its right to define participation in that primary, by voters and by candidates, and including whether the LP wishes to participate in a primary or alternatively nominate its candidates to the general election ballot by convention or caucus;

b) conducting any partisan primary without implementing a reasonable mechanism to effectuate the LP's exercise of its right to limit participation in that primary to candidates who are current members of the LP;

c) conducting any general election without affording the LP clear and easily ascertainable standards for showing a "modicum" of voter support necessary for access to the general election ballot;

d) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the LP for that primary.

41. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983 *et seq.*

PRAYER FOR RELIEF

Plaintiffs respectfully request the Court enter judgment:

1. Declaring R.C.W. § 29A.24.031 and newly promulgated WAC 434-215-015 unconstitutional.

2. Declaring that R.C.W. §§29A.20.110 through 29A.20.201 remain valid law and ordering the defendants to place on the general election ballot any candidate who complies with their provisions.

3. Declaring that the LP is entitled to nominate its standard bearers for election to public office by convention and/or caucus without substantive interference from the State and/or the Defendant County Auditors.

4. Declaring Initiative 872 unconstitutional to the extent it deprives the LP of the right to determine who may participate in the nomination of its standard bearers.

5. Declaring Initiative 872 unconstitutional to the extent it requires the LP to demonstrate any more than a "modicum of support" for advancing to the general election ballot.

6. Declaring Initiative 872 unconstitutional in its entirety because it lacks a severability clause.

7. Preventing State officials from depriving the LP and its adherents of their civil rights by

requiring the LP to select the nominees of the LP through a primary process in which LP members not permitted to exercise their First Amendment rights of association and exclusion.

8. Grant Plaintiffs preliminary and permanent injunctive relief restraining State officials from:

a) conducting any partisan primary without affording the LP reasonable opportunity in advance of that primary to exercise its right to define its participation in that primary, by voters and by candidates, and including whether the LP wishes to participate in a primary or alternatively nominate its candidates to the general election ballot by convention or caucus;

b) conducting any partisan primary without implementing a reasonable mechanism to effectuate the LP's exercise of its right to limit participation in that primary to candidates who are current members of the LP;

d) conducting any general election without affording the LP clear and easily ascertainable standards for showing a "modicum" of voter support necessary for access to the general election ballot;

e) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the LP for that primary.

9. Awarding Plaintiffs reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983 *et seq.*

10. Granting such further relief as the Court deems appropriate, including leave to amend these pleadings as discovery proceeds.

DATED Thursday, May 19, 2005, at Tacoma, Washington.

SHEPARD LAW OFFICE, INC.,

Richard Shepard

RICHARD SHEPARD, WSBA # 16194
Attorney for Proposed Intervenors
LIBERTARIAN LP OF WASHINGTON STATE, RUTH BENNETT, and J. S. MILLS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, CHRISTOPHER VANCE, BERTABELLE HUBKA, STEVE NEIGHBORS, BRENT BOGER, MARCY COLLINS, MICHAEL YOUNG, Plaintiffs, v. DEAN LOGAN, King County Records & Elections Division Manager, BOB TERWILLIGER, Snohomish County Auditor; VICKY DALTON, Spokane County Auditor; GREG KIMSEY, Clark County Auditor; CHRISTINA SWANSON, Cowlitz County Auditor; VERN SPATZ, Grays Harbor County Auditor; PAT GARDNER, Pacific County Auditor; DIANE L. TISCHER, Wahkiakum County Auditor; and DONNA M. ELDRIDGE, Jefferson County Auditor, Defendants,	No. CV05-0927-TSZ DECLARATION OF JOHN J. WHITE, JR. IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION NOTE ON MOTION CALENDAR: FRIDAY, JUNE 10, 2005 ORAL ARGUMENT REQUESTED

JOHN J. WHITE, JR. declares under penalty of perjury under the laws of the State of Washington and the United States of America as follows:

1. I am one of the attorneys for the plaintiffs in this lawsuit, am competent to testify, and make this declaration of my own personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of a printout of the cover page and pages 10, 11, 12, 27, 28, and 29 of the 2004 general election Voters' Pamphlet, published by the Office of the Secretary of State, which I received from Assistant Attorney General Jeff Even by e-mail on May 17, 2005. These pages are devoted to an explanation and text of Initiative 872.

3. Attached hereto as Exhibit 2 is a true and correct reduced copy of a printout of the "Yes on 872" home page, sponsored by The Washington State Grange, http://www.blanketprimary.org.

4. Attached hereto as Exhibit 3 is a true and correct copy of a printout of the "Frequently Asked Questions" link from the "Yes on 872" home page, http://www.blanketprimary.org/faq-jan2004.htm.

5. Attached hereto as Exhibit 4 is a true and correct copy of a printout of the "I-872 Flyer" link from the "Yes on 872" home page.

6. Attached hereto as Exhibit 5 is a true and correct copy of a letter I sent to defendant Dean Logan, King County Records & Elections Division Manager, regarding the Washington State Republican Party's rules governing the nomination of its candidates and the eligibility of candidates to be associated with the Republican Party.

7. Attached hereto as Exhibit 6 is a true and correct copy of a letter I sent to defendant Greg Kimsey, Clark County Auditor, regarding the Washington State Republican Party's rules governing the nomination of its candidates and the eligibility of candidates to be associated with the Republican Party. Identical (in substance) letters were sent to all of the other defendants except Dean Logan, who received the letter attached as Exhibit 5, and Donna M. Eldridge, Jefferson County Auditor.

8. Attached hereto as Exhibit 7 is a true and correct copy of the "Rules for the Nomination of Republican Candidates" that were adopted by the Republican State Committee. A copy of these rules were enclosed with each of the letters identified in Exhibits 5 and 6.

9. Attached hereto as Exhibit 8 are true and correct copies of letters I received from defendants Vicky Dalton (dated May 17, 2005), Greg Kimsey (dated May 16, 2005), Bob Terwilliger (dated May 13, 2005), and Dean Logan (dated April 27, 2005).

10. Attached hereto as Exhibit 9 is a true and correct reduced copy of a printout of an "Elections Calendar" for 2005 web page published by the Secretary of State, http://www.secstate.wa.gov/elections/calendar_list.aspx.

SIGNED this _____ day of May, 2005 in Kirkland, Washington.

John J. White

JOHN J. WHITE, JR.

EXHIBIT 2

Initiative 872 – Preserve the Blanket Primary

YES ON 872

PROTECT OUR RIGHT TO VOTE FOR THE PERSON, NOT THE PARTY

Minor parties benefit from I-872; Grange dispels myths

The Washington State Grange announced today that the effects of the qualifying (or "top-two") primary proposed in Initiative 872 could serve to benefit minor parties in primary elections for legislative races. This is contrary to arguments made recently by opponents of the initiative, who have irresponsibly stated that I-872 will shut out minor parties.

"We've done some research on this issue, and it turns out that the doom and gloom scenarios painted by our opponents are simply not true," said Grange President Terry Hunt. "We looked at legislative elections in 2000 and 2002, and we found that a significant number of third party candidates would have made it to the general election under a qualifying primary."

The Grange's research concluded that, in the primary election of 2000, a total of 13 minor party candidates for the legislature would have advanced to the general election had the top-two system been in place at that time. In three of those races, the minor party candidates actually received a higher proportion of the vote than one or more of the major party candidates in those races. In 2002, four legislative races would have advanced minor party

candidates to the general election under the qualifying primary.

"These figures assume that the dynamics of the qualifying primary will be the same as they were under the blanket primary," said Grange Elections Specialist Don Whiting. "Because a qualifying primary is more competitive than a nominating primary, we could even see more minor party candidates for legislative offices at this 'grass roots' level.

[extraneous web information omitted]

http://www.blanketprimary.org

EXHIBIT 3

BLANKETPRIMARY.ORG

INTIATIVE 872

FREQUENTLY ASKED QUESTIONS

About the Proposed "People's Choice Initiative"

Washington State Grange President Terry Hunt has filed a proposed initiative with the Secretary of State to protect the state's primary system from attacks by the major political parties. These questions and answers relate to the proposed initiative and the legal and legislative context in which it is being proposed.

How would this proposed initiative change our election laws?

This proposed initiative will only make changes in the state's primary laws if the US Supreme Court does not accept an appeal of the Ninth Circuit Court decision against Washington State's blanket primary. We believe that the Supreme Court will eventually uphold the blanket primary, but we need to be prepared if that does not happen. The proposed initiative would replace the current nominating system with a qualifying primary, similar to the nonpartisan primaries used for city, school district, and judicial offices. As in those primaries, the two candidates who receive the greatest number of votes would advance to the general election. Candidates for partisan offices would continue to identify a political party preference when they file for office, and that designation would appear on both the primary and general election ballots.

Would the primary ballot look any different to the voter?

No. At the primary, the candidates for each office will be listed under the title of that office, the party designations will appear after the candidates' names, and the voter will be able to vote for any candidate for that office (just as they now do in the blanket primary).

Would the general election ballot look different to the voter?

Sometimes, but only rarely. Depending on the number of candidates on the primary ballot for a particular office and the amount of public support each candidate achieves, the voter might be presented with a choice in the general election between two candidates of the same political party. This would only happen if both of those candidates received more votes in the primary than any other candidates (in the same party or any other political party). A qualifying primary forces political parties to recruit the best possible candidates and to actively contest all of the offices on the ballot.

Why is the Washington State Grange proposing this initiative?

We know that the voters of Washington overwhelmingly support the blanket primary. In a blanket primary, the voter does not have to declare political party affiliation at any stage of the process, and may vote for any candidate for any office on the primary ballot. "The major political parties are now trying to convince the Legislature and the public that we have to change the primary system to restrict voters choices in the primary and to force independent voters out of the primary altogether," Hunt explained. "This is simply not true. Through

this initiative, we can continue to have all of the benefits of the blanket primary, including the right of a voter to pick any candidate for any office." For seventy years under the blanket primary system, the voters of this state have chosen which candidates advance to the general election ballot. Now, the major political parties are trying to take that away from the voters. This proposed initiative will ensure that the candidates who appear on the general election ballot are those who have the most support from the voters, not just the support of the political party leadership.

Is the blanket primary case "over" and is the blanket primary "dead"?

No. Although the political party leaders have made this claim in the press, the Secretary of State, the Attorney General, and the Washington State Grange will file a motion for review with the U.S. Supreme Court. If the U.S. Supreme Court accepts the request for review, a hearing would be likely in late 2004 or in early 2005. The blanket primary has been upheld by the Washington State Supreme Court twice and by the Federal District Court. The recent decision in the Ninth Circuit is the only time that a federal or state court has ruled that the blanket primary in Washington is invalid.

What will happen if the U.S. Supreme Court hears the case and reverses the ruling of the Ninth Circuit?

If the Supreme Court rules that the blanket primary is valid, we will keep our nominating system exactly as it is now. The Legislature will not need to amend the laws governing the primary in 2004 and the

State Grange will not need to pursue its initiative this year.

What will happen if the U.S. Supreme Court refuses to review the Ninth Circuit Court decision or hears the case and upholds the Ninth Circuit ruling?

Either of these actions would end the legal appeal of this case. If the Supreme Court refuses to hear the case on review or hears the appeal and declares the blanket primary invalid, Washington state will have to adopt a different nominating system for partisan offices. The Legislature would have to adopt a new nominating system for partisan offices – or the voters could do this through the initiative process.

Will there be a ruling from the U.S. Supreme Court before the legislative elections in 2004?

The U.S. Supreme Court will probably either grant or deny a review of the lower court ruling in March or April of 2004. If the Supreme Court takes the case on review and a stay is issued against the Ninth Circuit Court decision, there should be no change in the statutes until after the 2004 election. If the Court denies the review, the Legislature may have to act to provide an alternative system for the 2004 primary. Because of the timing, this might require a special legislative session.

Could the Legislature provide an alternative to the blanket primary during the regular session in 2004, if the U.S. Supreme Court does not decide on the application for review until April or May?

The Legislature should wait until the U.S. Supreme Court has decided whether or not to hear the blanket primary case. However, because that decision may come between the regular session of the Legislature and the beginning of the election process in 2004, the House and Senate will likely hold hearings and other deliberations on possible amendments to the blanket primary in the event that a special session is needed later in 2004.

If all the appeals fail, will we have to require voters to register by party or declare political party at the primary?

No. Although the political parties will probably advocate these options, the Legislature has several other choices to consider. Some of these approaches retain almost all of the features of the current primary system. We can change our current system to a qualifying primary. The only difference would be that, at the general election, the two candidates who received the most votes in the primary (for each office) would appear on the ballot – instead of one candidate from each major political party. Both the U.S. Supreme Court and the Ninth Circuit have ruled that this form of primary is different from the partisan blanket primary now in use in Washington state and that qualifying primaries are not subject to the kind of legal challenge presently being made by the political parties. The State Grange wants the Legislature to know that there are alternatives to the restrictive proposals the political parties are trying to push, and it wants the voters to know that they can continue to have a primary where they choose the candidates that go on the general election ballot.

If Washington adopts a qualifying primary, does this mean that the offices become nonpartisan?

No. Candidates will continue to express a political party preference when they file for office and that party designation will appear on the ballot. An office would only become nonpartisan if the Legislature adopts a statute prohibiting party designations on the ballot for candidates for that office.

In the past, there have been races for major offices including the Governor where the two candidates with the most votes in the primary were from the same political party. Would the initiative encourage this kind of outcome?

No. The initiative should force the political parties to compete more effectively for these offices. Unfortunately, we have seen recent races for Governor where one of the major parties nominated a candidate that received less than 40% of the vote in the general election. Under this initiative, parties should seek candidates with broad public support who can survive a competitive primary.

Does this proposed initiative create a "Cajun" primary, like they have in Louisiana?

Absolutely not. In Louisiana, voters are required to register by political party, and if a candidate receives more than 50% of the vote for an office at the primary, he or she is elected (the office does not even appear on the general ballot). Under this proposed initiative, voters would never have to declare political party affiliation and every office would appear on the general election ballot.

Would this proposal eliminate minor party candidates from the primary or general election ballot?

No. Minor parties would continue to select candidates the same way they do under the blanket primary. Their candidates would appear on the primary ballot for each office (as they do now). Minor party candidates have had good success recently advancing candidates to the general election in districts where only one of the major political parties runs a candidate (about 15% of all legislative districts). Presumably they would continue to do well in these circumstances.

The major political parties have threatened that, if the Legislature adopts a qualifying (top-two) primary, then they would hold their own nominating conventions and sue in court to prevent anyone else from using their "name" as a party label. Would the same thing happen if the initiative is adopted?

A lawsuit is likely, but this is a hollow threat on the part of the parties. They would be unlikely to prevail on either claim. The major political parties can hold conventions and endorse candidates under current election law. The initiative would not change this. However, because there are no statutes preventing other candidates from filing for office and no laws permitting the appearance of the party endorsement on the ballot, such "nominations" are not relevant to the conduct of the primary or the election. The major parties' do not have a defensible claim that no one can use their "name" without their permission. In a recent case in Oregon about this issue, the court held

that the party has no such right. This is the same as Midas Muffler trying to claim that no one else can use the word "muffler". They have a legal right to their whole name, but not to either the word "midas" or the word "muffler", by itself.

PRESERVE YOUR VOTING RIGHTS

[logo]

Sponsored by: Washington State Grange

EXHIBIT 4

YES [picture omitted] I-872

Vote for the person, NOT the party

Initiative Measure 872

Advantages of a Qualifying Primary for Washington State

The federal courts have ruled that Washington can no longer conduct "blanket primaries", as it has for nearly seventy years. During the 2004 session, the Legislature adopted a new type of primary, called a "qualifying primary" or a "top-two primary". However, Governor Locke extensively vetoed that bill, eliminating the qualifying primary and creating instead a nominating primary in which voters will only be able to vote for the candidates of a single party in the primary.

The Washington State Grange opposes primaries in which voters are restricted to voting for candidates of only one party and does not want to see political parties gain control of the primary. Initiative Measure 872 establishes a qualifying primary which will give voters the freedom they enjoyed under the blanket primary — to vote for any candidate they prefer for each office.

Independent Voters Should be Free to Support Any Candidate in the Primary

Most of the voters in Washington are independents who "vote for the person, not the party." They want to support and vote for the candidates that they feel are the most qualified and will do the best job – without regard to the political party of the candidate.

Voters do not want to be restricted in the primary to voting on the candidates of only one party because, for many voters, this prevents them from expressing support for all the candidates they want to see elected. Initiative 872 gives voters this freedom to choose any candidate in the primary.

Qualifying Primaries are More Competitive

Under Initiative 872, the two candidates with the most votes in the primary win and go on to the general election ballot. No political party is guaranteed a spot on the general election ballot. Parties will have to recruit candidates with broad public support and run campaigns that appeal to all the voters.

Under Initiative 872, this will be especially true in "safe" legislative districts that are historically dominated by one party. In a nominating primary system, there may be several candidates from the dominant party in the primary, but only one of them advances to the general. Often, this is the only candidate on the general election ballot. If Initiative 872 is approved, voters in the general election will always have a choice between the two most popular candidates in the primary.

Elected Officials Will be More Representative of the Public

Qualifying primaries are more likely to produce public officials who represent the political preferences and opinions of a broad cross-section of the voters. Candidates will need to appeal to all the voters, partisan and independent alike. They will not be able to win the primary by appealing only to party

activists. A party nominating primary takes control of the primary away from the voters and gives it to the leadership of the political party organizations. The qualifying primary gives voters the kind of control that they exercised for seventy years under the blanket primary.

Initiative 872 Protects Voter Privacy and Increases Participation

Under I-872, voters will never have to declare party or register by party in order to vote in the primary. In the primaries in 2000, the turnout in Washington was more than twice as high as in states with party primaries – because voters in this state could support any candidate on the primary ballot.

The Qualifying Primary is Constitutional

A majority of the US Supreme Court clearly distinguished the two types of primaries. They described the qualifying primary in the following way, "Each voter, regardless of party affiliation, may vote for any candidate, and the top two vote getters (or however many the State prescribes) then move on to the general election. This system has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee."

Because the voters are not selecting party nominees, a qualifying primary does not interfere with any constitutionally-protected interest of a political party. The Grange specifically drafted Initiative 872 to conform to this ruling by the US Supreme Court.

A Qualifying Primary Will be Better for Minor Party Candidates

Minor parties will be able to participate more effectively in a qualifying primary system than in nominating primaries. In a qualifying primary, minor parties are more likely to focus their efforts on "grassroots" legislative offices than on statewide and federal positions. If they compete aggressively in districts where one of the two larger parties is not running any candidates, they will have a good chance of qualifying a candidate for the general – and of winning more support for their party than in the past. Initiative 872 creates a level playing field for all candidates in the primary.

YES [picture omitted] **I-872**

EXHIBIT 5

[letterhead omitted]

April 19, 2005

VIA REGULAR MAIL and
FACSIMILE: 206-296-0108

Mr. Dean Logan
King County Records & Elections
King County Administration Building
Room 553
500 Fourth Avenue
Seattle, WA 98104

Re: Nomination of Republican Candidates in 2005

Dear Mr. Logan:

As you know, the Ninth Circuit Court of Appeals struck down Washington's Blanket Primary because it impaired the First Amendment right of association of the Republican Party and its members. The Republican State Committee has adopted rules exercising those rights and governing the process for determining who will be the Republican nominee for partisan elected office. I have enclosed, for your information and use, a copy of those rules.

With the passage of Initiative 872 and its amendment of a portion of Washington's partisan primary law, many details of the administration of the primary remain unresolved or require adoption of appropriate procedures to assure fair representation. If the effect of Initiative 872 is the establishment of a Louisiana-style jungle primary, part III and IV of the rules adopted by the Republican State Committee apply. In that event, the Republican Party will nominate its candidate

through a caucus and convention process. In King County, the caucus and convention process begins May 17 with precinct caucuses. Only the candidate nominated by the Republican Party will be eligible to use the Republican Party name in the September primary. The representation by other candidates that they are affiliated with the Republican Party would cause a substantial risk of confusion among Republican voters, risk fragmentation of the Republican vote and would violate the constitutional rights of association of Republican voters in King County.

If the effect of Initiative 872 is that the primary for partisan King County office will be a Louisiana-style ("top two go forward") primary, we expect the county to respect the Republican Party's selection of its nominee. Please confirm promptly that the county will respect the Republican Party's First Amendment rights and not cause voter confusion by representing that more than one Republican candidate is on a Louisiana-style primary ballot. If you have any questions, please do not hesitate to call.

Very truly yours,

LIVENGOOD, FITZGERALD & ALSKOG, PLLC

John J. White, Jr.

John J. White, Jr.

JJW/lw
Enclosure: a/s
cc: Christopher Vance (w/o encl.)

EXHIBIT 6

[letterhead omitted]

May 6, 2005

VIA REGULAR MAIL and
FACSIMILE: 1-360-397-6007

Mr. Greg Kimsey
Clark County Auditor
P.O. Box 5000
Vancouver, WA 98666-5000

Re: Nomination of Republican Candidates in 2005

Dear Mr. Kimsey:

As you know, the Ninth Circuit Court of Appeals struck down Washington's Blanket Primary because it impaired the First Amendment right of association of the Republican Party and its members. The Republican State Committee has adopted rules exercising those rights and governing the process for determining who will be the Republican nominee for partisan elected office. I have enclosed, for your information and use, a copy of those rules.

With the passage of Initiative 872 and its amendment of a portion of Washington's partisan primary law, many details of the administration of the primary remain unresolved or require adoption of appropriate procedures to assure fair representation. If the effect of Initiative 872 is the establishment of a Louisiana-style jungle primary, part III and IV of the rules adopted by the Republican State Committee apply. In that event, the Republican Party will nominate its candidate through a caucus and convention process. Only the candidate nominated by the Republican Party will be

eligible to use the Republican Party name in the September primary. The representation by other candidates that they are affiliated with the Republican Party would cause a substantial risk of confusion among Republican voters, risk fragmentation of the Republican vote and would violate the constitutional rights of association of Republican voters in Clark County. If Clark County prints ballots identifying persons other than the Republican nominee as a "Republican" candidate, it will be forcing the party and its adherents to affiliate with those unauthorized candidates under the color of state law.

If the effect of Initiative 872 is that the primary for partisan Clark County office will be a Louisiana-style ("top two go forward") primary, we expect the county to respect the Republican Party's selection of its nominee. Please confirm promptly that the county will respect the Republican Party's First Amendment rights and not cause voter confusion by representing that more than one Republican candidate is on a Louisiana-style primary ballot. If you have any questions, please do not hesitate to call.

There is also a question whether I-872 has even come into effect yet, because there has been no final judgment in the prior litigation concerning the blanket primary. If that is the case, the former "Montana" primary would still apply for this cycle.

Very truly yours,

LIVENGOOD, FITZGERALD & ALSKOG, PLLC

John J. White, Jr.

John J. White, Jr.

JJW/lw
Enclosure: a/s
cc: Christopher Vance (w/o encl.)
Brent Boger, Chairman
Clark County Central Committee (w/o encl.)

EXHIBIT 7

Rules for the Nomination of Republican Candidates

PART ONE (Party Primary)

Rule 1. Party Primary Required. Any primary which has the effect of nominating a candidate of the Republican Party shall be conducted by use of a ballot on which only Republican candidates for partisan offices are listed. If the state has established a system of party registration, any voter who is registered as a member of the Republican Party and any voter who has not declared party affiliation may participate in the primary of the Republican Party by affirmatively requesting a Republican Ballot. In the absence of party registration, any voter may participate in the primary of the Republican Party by affirmatively requesting a Republican Ballot. A ballot that contains the names of candidates of other parties will comply with this rule if it provides for a declaration of party identification by the voter and only those declaring themselves to be Republicans shall be tabulated for purposes of determining the Republican nominee for any office.

Rule 2. Identification of Participants in Republican Primary. If permitted by Washington state law or provided for by court order, as a condition of participating in a Republican primary, a voter consents to the state providing the Republican Party with a list including the voter's name as a voter who participated in the Republican Party primary.

PART TWO: Qualification for Primary Ballot

Rule 3. Party Registration Required. If the state of Washington shall have established a system of voter registration in which voters may register as a member of the Republican Party, any candidate seeking to qualify for the primary ballot as a Republican must be registered as a Republican at the time the declaration of candidacy is filed.

Rule 4. Significant Support Required. The Republican Party asserts the right to grant permission to use the Republican name and to file seeking the Republican nomination for partisan offices only to candidates who demonstrate significant support within the Republican Party. Rules in Part Two shall become effective January 1, 2005 for all partisan elections conducted after that date.

Rule 5. Significant Support for Incumbents. When an incumbent seeking reelection obtains a vote of more than 66% at a nominating convention called pursuant to rules 6 through 10 as applicable for his office, the incumbent shall be the only candidate certified. If the incumbent does not receive a vote of more than 66%, the incumbent and any challenger must qualify under Rules 6 through 10.

Rule 6. Demonstration of Significant Support: Statewide Office. A candidate for partisan statewide office (including United States Senator) demonstrates significant Republican support by obtaining a vote of 25% or more of the delegates to a Republican nominating convention held not earlier than the first day of May and not

later than the Sunday before filing for office commences and held pursuant to the rules for caucuses and conventions adopted by the Republican State committee of Washington, and further complying with these rules.

Rule 7: Demonstration of Significant Support, United States Congress.

A candidate for United State Congress demonstrates significant Republican support by obtaining the vote of 25% or more of the delegates to county conventions from precincts within the Congressional District. Votes shall be tallied at each county convention (or, if provided for by the rules of the county, at legislative district caucuses called by the respective county), such nominating conventions or caucuses held not earlier than the first day of April and not later than the last date set for the holding of county conventions in accordance with the rules for caucuses and conventions adopted by the Republican State Committee of Washington. The results from each county shall be reported to the Secretary, the Republican State Committee of Washington, within three days after the convention has adjourned.

Rule 8. Demonstration of Significant Support: County Office. A candidate for any county partisan office demonstrates significant Republican support by obtaining the vote of 25% or more of the delegates to a Republican county nominating convention, such nominating convention to be held not earlier than the first day of April and not later than the last date set for the holding of county conventions in accordance with the rules for

MSNBC.com

State GOP picks Hammond – Dunn will still run in primary for 9th District

by Dean A. Radford, Journal Reporter
The King County Journal

BELLEVUE – Steve Hammond of Enumclaw pulled off a minor upset Saturday, beating political newcomer Reagan Dunn for the Republican Party nomination in the County Council's 9th District.

The political power of the Dunn family name—he's the son of former U.S. Rep. Jennifer Dunn—and more than $100,000 in contributions filled Dunn's campaign sails.

But Hammond succeeded where it counted the most—he got his people to the polling place, the county party's nominating convention. It's the fourth time in just two years that his political future has been in the hands of others.

The 9th District was the council race everyone came to watch or to cast a ballot in, drawing about 60 percent of the convention's 721 delegates.

But don't count out Dunn yet, even though the convention was intended to pick the party's one nominee for county executive and each County Council district race.

Because of the closeness of the outcome, just 26 votes, Dunn, of Bellevue, plans to file as a candidate in the September election, which is designed to send the top two vote-getters to the general election.

"I think it's time to let the people decide," he said, saying he's not disrespectful of the party, which has now endorsed Hammond.

The question is whether his name will have an R for Republican after it. A decision on a federal lawsuit over the state's primary system could play a part in the answer. The chairman of the county Republican Party, Michael Young, said the state party would sue King County to remove Dunn's name from the ballot if he runs as a Republican.

It would put the party in the uncomfortable position of challenging the son of a former chairwoman of the state party, Jennifer Dunn.

If necessary, "I am going alone," said the lifelong Republican.

Dunn thinks the loser in a council race in Seattle pitting two Democratic incumbents, Bob Ferguson and Carolyn Edmonds, will make the same choice.

It's possible Dunn and Hammond could both advance to the general election, depending on the strength of the candidate the Democrats field in the race. Their nominating convention is later this month in Bellevue.

The final vote tally was 234 for Hammond to 209 for Dunn. In keeping with recent problems counting ballots in King County, there were eight more ballots cast than eligible voters.

But the difference wasn't enough to change the outcome of the election, so the results stood.

Had he lost, Hammond said he would have bowed to the wishes of the party and not challenged Dunn in

the September election. He's not sure how to react to Dunn's decision, now.

But, he said, the challenges "just keep coming," especially from within his own party. Some have said Dunn was the object of "dirty politics" late in the race, but that allegation caught Hammond by surprise.

Dunn's hand shake and a hug after the vote, Hammond said, was a sign of party unity.

Hammond kept his cards—his delegates—close to his chest. Cautious optimism has become part of his election-day lexicon. Just before the convention, Dunn said the race for delegates had tightened considerably, but he felt he was pulling away.

Each candidate's name was placed into nomination; then they gave a five-minute speech. Speaking next to the podium with microphone in hand, Dunn said he is the stronger of the two candidates to beat a Democrat.

He pointed out that gubernatorial candidate Dino Rossi barely carried the 9th District. After his speech, Dunn sat in the back row to listen to Hammond. His mother walked over and placed her hand on his shoulder.

Both candidates whipped up the delegates with harsh criticisms of County Executive Ron Sims, especially the way his elections division handled the 2004 election, and of the much-maligned, at least in rural areas, Critical Areas Ordinance.

"We are in the middle of a war," Hammond said. "I am asking that you not take me off the battlefield."

Saturday, it was Hammond's soldiers who won the battle. He seemed to enjoy the day, chatting easily with supporters.

A union member, Barbara Bogar of Enumclaw, admits she's a Democrat, but "today, I am a Republican for him." Hammond's experience on the council matters to her.

"He's not new coming into it," she said. "He's here for us."

Both candidates started their political careers as appointees, replacing council icons, now attorney general Rob McKenna in Dunn's case and the late Kent Pullen in Hammond's case.

Each bore the title incumbent, just from different districts. Redistricting threw them together in the council's new 9th District, which Hammond has represented.

Rossi nominates Irons for county executive post

By Dean A. Radford

Journal Reporter

BELLEVUE—Republican officials admit Saturday's first-ever nominating convention was a bit chaotic, but Dino Rossi brightened everyone's day when he nominated David Irons for county executive.

EXHIBIT E

POLITICAL ADVERTISING

[picture]

Public Disclosure Commission

[LOGO]

711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

December 2004

"Political Advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

GENERAL REQUIREMENTS

Sponsor ID: Written ads must identify the sponsor's name and address unless exempt.*

Exempt From Sponsor ID: Yard signs (8' x 4' or smaller) and some other items are exempt. See list at far right.

Broadcast Ads: Radio and TV ads must state the sponsor's full name, but not the address.*

Party Affiliation: All forms of advertising must clearly state a candidate's party affiliation if the candidate is seeking partisan office. *This requirement applies regardless of whether the ad is sponsored by the candidate or someone else.*

Size and Placement: See back side of brochure for size and placement criteria regarding sponsor and party ID.

Photographs: If candidate photos are used in any ad, at least one of them must have been taken within the last 5 years and be no smaller than the largest candidate photo in the ad.

Office Sought: State law does not require ads to include the office or position a candidate is seeking.

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*Advertising that qualifies as an "independent expenditure" is subject to different sponsor ID requirements (unless the sponsor is a political party). See reverse side.

The Law Forbids:

- Using an assumed name when identifying the sponsor.
- Sponsoring an ad that contains a false statement of material fact *about a candidate* (unless a candidate is making statements about him or herself).
- Falsely claiming or implying a person or group supports or endorses a candidate when they do not.
- Falsely representing a candidate as the incumbent. (On letterhead, yard signs and other forms of advertising, non-incumbents must actually state they're seeking the office: e.g., Mary Smith for State Senate or Elect Mary Smith State Senator.)
- Distributing campaign material deceptively similar in design or appearance to the voters and candidate's pamphlets published by the Secretary of State.
- Using the state seal or its likeness to assist or defeat a candidate.

These definitions apply in political ads:

"Incumbent" means a person who now holds an elected office.

"Re-elect" represents that the candidate is presently holding the office being sought, was elected to it, and is seeking another term in that same office in the same district or political subdivision.

"Retain" represents that the candidate is the incumbent but does not imply that the candidate attained the office by election.

"Return" represents that the candidate now holds, or has previously held, the office being sought, but does not represent that the office was attained by election.

"Sponsor" means the candidate, committee or other person who pays for the advertisement. If a person acts as an agent for another or is reimbursed for payment, the original source of the payment is the sponsor.

To identify the sponsor, use the words "Paid for by" or "Sponsored by" followed by the name and address of the sponsor.*

What's Needed for Sponsor ID

State, Local & Judicial Candidates—show the candidate's name and address or the candidate's committee name and address.

Federal Candidates—only subject to federal law. (Contact FEC at 1-800-424-9530)

Political committees—show the committee's name and address. The treasurer's name is not required.*

Organizations or businesses—show the organization or business name and address. President or treasurer's name is not required.*

Multiple sponsors—show each sponsor's name and address. If one person pays for printing and another pays for mailing, list both sponsors.*

Printed ads—show the sponsor's name, mailing address and, if applicable, the candidate's party affiliation in an area apart from the ad text. If the ad is more than one page, identify the sponsor (and party) on *the first page*. Identification on a mailing envelope is optional; it's the ad enclosed in the envelope that must be properly identified.*

Radio and TV ads—clearly say the sponsor's name. Address not required.*

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*Advertising that qualifies as an "independent expenditure" is subject to different sponsor ID requirements (unless the sponsor is a political party). See reverse side.

Items Exempt from Sponsor ID

ashtrays
badges & badge holders
balloons
bingo chips
brushes
bumper stickers (4" x 15" or smaller)
business cards
buttons
newspaper ads (one column inch or smaller)
noisemakers
official state or local voter pamphlets
paper & plastic cups
paper & plastic plates
paperweights
pencils

cigarette lighters
clothes pins
clothing
coasters
combs
cups
earrings
emery boards
envelopes
erasers
Frisbees
glasses
golf balls & tees
hand-held signs
hats
horns
ice scrapers
inscriptions
key rings
knives
labels
letter openers
magnifying glasses
matchbooks
nail clippers & files
pendants
pens
pinwheels
plastic tableware
pocket protectors
pot holders
reader boards with moveable letters
ribbons
rulers (12" or smaller)
shoe horns
skywriting
staple removers
sticker (2-3/4" x 1" or smaller)
sun glasses
sun visors
swizzle sticks
tickets to fund raisers
water towers
whistles
yard signs (8' x 4' or smaller)
yo-yo's
all similar items

ID Size and Placement

According to state law, on written or printed political advertising, the sponsor's full name and address and the candidate's party affiliation must:

- appear on the first page of the communication in at least 10 point type, or
- for ads such as billboards or posters, appear in type at least 10% of the largest size type used in the ad, and
- not be screened or half-toned (i.e., not made lighter through some printing or photographic process, and
- be set apart from any other ad text.

In any radio or TV political ad, the sponsor's full name and candidate's party identification must be clearly spoken.

Abbreviations

The following abbreviations may be used in advertising. PDC believes they clearly identify political party affiliation.

Communist—Com

Democrat—D, Dem, Demo

Independent or unaffiliated—Ind, Indep

Libertarian—L, LP, LET, LBTN

Republican—R, GOP, Rep (Use the latter only when it could not erroneously imply the candidate is a State Representative.)

Socialist—Soc

Socialist Workers—Soc Workers, SWP

Official symbols or logos adopted by the state committee of the party may be used in lieu of other identification; a copy of the symbol or logo should be provided to the PDC.

Independent Expenditure Advertising

Political advertising that meets **all** of the following criteria must include more details about the sponsor(s):

1) the ad supports or opposes a candidate for state or local office;

2) the ad is paid for by someone other than a candidate, a candidate's committee or agent;

3) the sponsor does the advertising completely independently of any candidate supported in the ad (or the opponent of the candidate opposed), or a candidate's committee or agent;

4) the sponsor did not received the candidate's encouragement or approval to do the ad; and

5) the ad costs at least $675, or the cost of this ad when combined with the cost of earlier ads supporting or opposing the candidate total $675 or more.

If all 5 conditions are met and the sponsor is other than a political party, the ad must contain the following:

"NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any

candidate. It is paid for by (name, address, city, state.)"

Further, if this type of *ad is sponsored by a political committee or PAC*, the following must also appear: "Top Five Contributors" followed by a list of the names of the five persons or entities making the largest contributions to the PAC during the 12 months before the ad runs. If a political committee keeps records necessary to track contributions according to the use intended by contributes, that committee may identify the top five contributors giving for that purpose.

Both the "Notice to Voters" and "Top Five Contributors" messages *must comply with the ID Size and Placement standards noted above.*

The "Notice to Voters" and "Top Five Contributors" provisions for radio and television independent expenditure political advertising must be clearly spoken.

If independent expenditure advertising is in the form of yard signs, bumper stickers, skywriting or other items exempt from sponsor ID (as discussed on the reverse), these ads are also exempt from the Notice to Voters and Top Five Contributors requirements.

MAILINGS: Any person or entity, except a political party or political committee, that in one calendar year mails 1,000 identical or nearly identical pieces of advertising supporting or opposing a candidate or ballot measure as an independent expenditure must provide the appropriate county auditor with a copy of the ad and written notice of the number of pieces

mailed within two working days of the mailing. Contact PDC for more information.

REPORTING INDEPENDENT EXPENDITURES: Anyone (except a committee already filing with PDC) that spends $100 or more supporting or opposing a candidate or ballot measure—and the expenditures are not made in conjunction with a candidate or ballot issue committee—must file independent expenditure reports (Form C-6). Last minute independent expenditure political ads valued at $1,000 or more presented to the public within 21 days of an election must be reported within 24 hours.

In addition, any business, union, association or other entity that during one calendar year makes independent expenditures totaling over $675 supporting or opposing state office candidates and statewide ballot measure must also file Form C-7 (unless the entity reports the expenditures as a PAC or lobbyist employer).

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, WASHINGTON DEOMCRATIC CENTRAL COMMITTEE, et al., Plaintiff Intervenors LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Plaintiff Intervenors v. DEAN LOGAN, King County Records & Elections Division Manager, et al., Defendants, STATE OF WASHINGTON, et al., Defendant Intervenors WASHINGTON STATE GRANGE, Defendant Intervenors.	NO. CV05-0927Z WASHINGTON STATE GRANGE'S ANSWER TO INTERVENOR PLAINTIFF DEMOCRATS' COMPLAINT

I. ANSWER

In answer to the Complaint In Intervention For Declaratory Judgment And For Injunctive Relief Regarding Initiative 872 And Primary Elections

("Complaint") alleged by the intervenor plaintiff Democrats in this case, the defendant-intervenor Washington State Grange answers and alleges as follows:

1. The allegations in paragraph 1 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, those assertions are not even an accurate summary or characterization of the law.

2. The allegations in paragraph 2 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, the assertions relating to "the selection of a political party's candidates and nominees" are irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872 does not select the candidate or nominee for any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*.

3. This defendant-intervenor admits that our State's voters overwhelmingly enacted Initiative 872, which became effective on or about December 2, 2004. The remaining allegations in paragraph 3 of the Complaint assert self-serving legal arguments and legal conclusions concerning that enactment, rather than allegations of fact, and therefore need not be admitted or denied. Moreover, those assertions are not even an accurate summary or characterization of the law.

4. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 4 of the Complaint.

5. This defendant-intervenor denies the assertions in paragraph 5 that "Initiative 872 is unconstitutional" and that "this is an action to protect the First Amendment rights of the Party and its adherents to advocate and promote their vision for the future without subtle or overt censorship or interference by the State through the County Auditors". Instead, this is an action by the Political Parties to quash the First Amendment and political speech rights of persons running for public office, to nullify the right of Washington voters to enact their laws by Initiative, and to entice judicial activism by demanding that this federal court impose the type of primary system that the Political Parties could not succeed in getting our State Legislature or our State's voters to enact.

6. This defendant-intervenor admits that this case involves a federal question and that jurisdiction is proper in this Court. The remaining allegations in paragraph 6 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied.

7. This defendant-intervenor admits that venue lies within this Western District of Washington at Seattle.

8. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint, and

therefore denies them. Moreover, what is intended by several allegations in this paragraph (e.g., those relating to "powers inherent" and "functions inherent" in a political party) are too vague to meaningfully admit or deny.

9. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint, and therefore denies them.

10. This defendant-intervenor admits the defendant County Auditors named in paragraph 10 of the Complaint have the responsibilities provided by Washington law. On information and believe, this defendant-intervenor also admits the residence location of those Auditors as alleged in paragraph 10. In further Answer to the Complaint's identification of the defendants in paragraph 10, this defendant-intervenor notes that the Court has granted the State of Washington, the Washington Secretary of State Sam Reed, the Washington Attorney General Rob McKenna, and the Washington State Grange permission to intervene in this action as defendant-intervenors. The defendant-intervenor Washington State Grange was the proponent of Initiative 872.

11. This defendant-intervenor admits that the primary established by Initiative 872 will be conducted in September 2005, but at this time is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint concerning the County Auditor quotation stated in the last sentence of that paragraph. The remaining

allegations in paragraph 11 assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Those assertions, moreover, are not even an accurate summary or characterization of the law – for they set forth quotations out of context and without acknowledgment of provisions superceded by Initiative 872. More specifically, the election system established by the voters' adoption of Initiative 872 defines "partisan office" as "a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name", and establishes that "any party or independent preferences are shown for the information of voters only". [Initiative §4 & §7(3).] Contrary to the legal arguments asserted in this paragraph of the Complaint, the primary system established by the voters' adoption of Initiative 872 does *not* select the candidate or nominee for any political party, but rather determines the two candidates or nominees for the general election ballot, while allowing each candidate to disclose to the voters his or her own political party preference.

12. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 12 of the Complaint.

13. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 13 of the Complaint.

14. This defendant-intervenor admits that Initiative 872 and the voters pamphlet referred to in

paragraph 14 speak for themselves. The remaining allegations in paragraph 14 assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Those assertions, moreover, are not even an accurate summary or characterization of the law. Contrary to the legal arguments asserted in this paragraph of the Complaint, the primary system established by the voters' adoption of Initiative 872 does *not* select the candidate, nominee, or "standard-bearer" for any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*.

15. The legal argument asserted in paragraph 15 of the Complaint is too vague to determine if it contains a factual allegation to be admitted or denied, and this defendant-intervenor accordingly denies it.

16. The allegations in paragraph 16 of the Complaint primarily assert self-serving legal arguments and legal conclusions rather than allegations of fact. Moreover, this paragraph's arguments relating to "the adulteration of the Party's nomination process" are irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872 does not select the candidate or nominee for any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*. Moreover, the arguments in this paragraph relating to "candidates' messages" and the political parties' complaints about the prospect of the voters (rather than the Political Parties) selecting the two candidates for the general election ballot confirm this

defendant-intervenor's prior observation that this is really an action by the Political Parties to quash the First Amendment and political speech rights of persons running for public office, and to secure from this federal court the type of primary system that the Political Parties could not succeed in getting our State Legislature or our State's voters to enact.

17. The allegation in paragraph 17 of the Complaint asserts a self-serving legal argument and legal conclusion rather than an allegation of fact, and therefore need not be admitted or denied. Moreover, that assertion is not even an accurate summary or characterization of the law since it ignores the superceding effect of the enactment of Initiative 872.

18. The allegations in paragraph 18 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, those assertions are not even an accurate summary or characterization of the law since they ignore the superceding effect of the enactment of Initiative 872. The election system established under Initiative 872 does not deny the plaintiff equal protection of the law as suggested by the section heading above this paragraph of the Complaint.

19. The *Reed* decision selectively quoted and characterized in paragraph 19 of the Complaint speaks for itself, and therefore that paragraph's self-serving partial characterization of that Court decision is denied.

20. The *Jones* and *Reed* decisions selectively quoted and characterized in paragraph 20 of the Complaint speak for themselves, and therefore

that paragraph's self-serving partial characterization of those Court decisions is denied.

21. This defendant-intervenor denies the allegations in the first sentence of paragraph 21, and in response to the second sentence admits that the Initiative and voters pamphlet speak for themselves.

22. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint, and therefore denies them. [This defendant-intervenor notes that the "Defendants" at the time that paragraph 22 was written did not yet include this defendant-intervenor, and thus that paragraph's statement about providing copies of the "rules" references in this paragraph does not apply. This defendant-intervenor would welcome the intervenor plaintiffs' providing it a copy of those "rules".] In any event, this paragraph's allegation concerning "candidates [of] the Party" is irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872 does not select the candidate of any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*.

23. The allegations in paragraph 23 of the Complaint concerning plaintiffs' "rights" assert self-serving legal arguments and legal conclusions rather than allegation of fact, and therefore need not be admitted or denied. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining allegations in paragraph 23 of the Complaint.

24. The allegations in paragraph 24 of the Complaint concerning plaintiffs' "rights" assert self-serving legal arguments and legal conclusions rather than allegation of fact, and therefore need not be admitted or denied. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining allegations in paragraph 24 of the Complaint.

25. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 25.

26. This defendant-intervenor admits a controversy exists concerning the Complaint's claim that our State's primary system under Initiative 872 is unconstitutional, but for the reasons previously noted in this Answer, denies the remaining allegations and assertions in paragraph 26 of the Complaint.

27. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 27 of the Complaint.

28. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 28 of the Complaint.

29. This defendant-intervenor admits that Initiative 872 does not have an express severability clause, but denies the assertion in paragraph 29 of the Complaint that the *entire* Initiative is therefore void if *any portion* of it is unconstitutional.

30. For the reasons previously noted in this Answer, this defendant-intervenor denies the

allegations in paragraph 30 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

31. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 31.

32. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 32 of the Complaint.

33. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 33 of the Complaint.

34. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 34.

35. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 35 of the Complaint.

36. This defendant-intervenor denies the allegations in paragraph 36 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

37. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 37.

38. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 38 of the Complaint.

39. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 39 of the Complaint.

40. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 40 of the Complaint.

41. This defendant-intervenor denies the allegations in paragraph 41 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

42. The Complaint's Prayers For Relief require no reply under the Civil Rules, and are therefore denied.

43. All allegations in the Complaint not specifically admitted above are denied.

II. DEFENSES

By way of further answer to the Complaint, and as further defenses, this defendant-intervenor alleges:

44. The Complaint fails to state a claim upon which relief can be granted.

45. To the extent the Complaint alleges "as applied" rather than "facial" invalidity of the upcoming September 2005 primary, this action is prematurely brought.

46. To the extent that the Complaint alleges any sort of trademark or tradename type protection of the party "label", the Complaint's allegations are barred by, e.g., the doctrines of laches, waiver, and estoppel.

47. To the extent that the Complaint alleges any sort of equitable protection of the party "label" or entitlement to a Court Order imposing the previously existing "Montana" primary system upon the State of Washington, the Complaint's allegations are barred by, e.g., the doctrines of unclean hands.

48. All allegations in the Complaint not specifically admitted above are denied.

III. PRAYER FOR RELIEF

Having fully Answered the Complaint, this defendant-intervenor respectfully requests the following relief from this Court:

1. Entry of a judgment dismissing the Complaint with prejudice, and denying the Complaint's requested injunctive, declaratory, and other relief;

2. Entry of a judgment declaring that Washington's election law as established by Initiative 872 does not deprive the plaintiffs of any legally cognizable rights protected by the constitution or laws of the United States or the State of Washington;

3. Entry of a judgment awarding defendant-intervenor recovery of its costs and attorney fees to the full extent allowed by law;

4. Permission to amend the pleadings to add additional matters verified during discovery or to conform to the evidence offered at the time of hearing or trial; and

5. Such other relief as the Court deems proper, just, or equitable.

RESPECTFULLY SUBMITTED this 10th day of June, 2005.

FOSTER PEPPER &
SHEFELMAN PLLC

Thomas F. Ahearne

Thomas F. Ahearne, WSBA No. 14844
Attorneys for Defendant-Intervenor
WASHINGTON STATE GRANGE.

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, WASHINGTON DEOMCRATIC CENTRAL COMMITTEE, et al., Plaintiff Intervenors LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Plaintiff Intervenors v. DEAN LOGAN, King County Records & Elections Division Manager, et al., Defendants, STATE OF WASHINGTON, et al., Defendant Intervenors WASHINGTON STATE GRANGE, Defendant Intervenors.	NO. CV05-0927Z WASHINGTON STATE GRANGE'S ANSWER TO INTERVENOR PLAINTIFF LIBERTARIANS COMPLAINT

I. ANSWER

In answer to the Libertarian Party's Complaint To Intervene For Declaratory Judgment And Other Relief ("Complaint") alleged by the intervenor plaintiff Libertarians in this case, the defendant-intervenor Washington State Grange answers and alleges as follows:

[Note: The Libertarians' pleading includes several un-numbered paragraphs under the heading "Summary Of Action", which appear *before* the heading captioned "COMPLAINT". Those un-numbered paragraphs appear to be merely a summary of what the ensuing numbered paragraphs of the Complaint claim rather than separate allegations of fact to be admitted or denied under the Civil Rules. To the extend those un-numbered paragraphs before the "COMPLAINT" allegations were intended to be separate allegations to be admitted or denied, this defendant-intervenor denies them for the reasons stated in the ensuing numbered paragraphs answering the numbered paragraphs of the Complaint.]

1. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint, and therefore denies them.

2. This defendant-intervenor admits that Ms. Bennett was a candidate for governor in the 2004 election, but at this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the other allegations in paragraph 2 of the Complaint, and therefore denies them.

3. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint, and therefore denies them.

4. This defendant-intervenor admits the defendant County Auditors named in paragraph 4 of the Complaint have the responsibilities provided by Washington law. On information and believe, this defendant-intervenor also admits the residence location of those Auditors as alleged in paragraph 4. In further Answer to the Complaint's identification of the defendants in paragraph 4, this defendant-intervenor notes that the Court has granted the State of Washington, the Washington Secretary of State Sam Reed, the Washington Attorney General Rob McKenna, and the Washington State Grange permission to intervene in this action as defendant-intervenors. The defendant-intervenor Washington State Grange was the proponent of Initiative 872.

5. This defendant-intervenor admits the allegation in paragraph 5 that this case involves a federal question and that jurisdiction is proper in this Court.

6. This defendant-intervenor admits that the allegation in paragraph 6 that venue lies within this Western District of Washington at Seattle.

7. The allegations in paragraph 7 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, those assertions are not even an accurat summary or characterization of the law. This defendant-intervenor further notes in answer to paragraph 7 that that paragraph's assertion relating to "the right of a party to select its nominees" is irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872

does not select the candidate or nominee for any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*.

8. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 8 of the Complaint.

9. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 concerning other parties' assertions and/or interpretations. This defendant-intervenor admits that Initiative 872 speaks for itself.

10. This defendant-intervenor admits that Initiative 872 and the voters pamphlet speak for themselves. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining assertions and allegations in paragraph 10 of the Complaint.

11. This defendant-intervenor admits that Initiative 872 and the voters pamphlet speak for themselves. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining assertions and allegations in paragraph 11 of the Complaint.

12. The allegations in paragraph 12 of the Complaint assert legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, those assertions are not even an accurate summary or characterization of the law.

13. The legal argument asserted in paragraph 13 of the Complaint is too vague to determine if it contains a factual allegation to be admitted or denied, and this defendant-intervenor accordingly denies it.

14. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 14 of the Complaint. Moreover, contrary to the legal arguments asserted in this paragraph of the Complaint, the primary system established by the voters' adoption of Initiative 872 does *not* select "standard-bearer" for any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*.

15. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 15. This defendant-intervenor admits that the WAC provision cited in the second sentence of paragraph 15 speaks for itself, and accordingly denies that sentence's partial characterization of that provision and its legal effect.

16. This defendant-intervenor admits that §17 of the Initiative is what paragraph 16 apparently refers to as a "repealer section", but denies that the statutes superceded by the primary system established by the enactment of Initiative 872 "remain valid law". At this moment, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 16 regarding

what the State has or has not previously "recognized", but admits that to the extent such "recognition" is stated in the court pleadings referred to in this paragraph, those pleadings should speak for themselves.

17. This defendant-intervenor admits that the primary system established by the enactment of Initiative 872 superceded inconsistent provisions of state law, but denies that the law provides plaintiffs the "rights" and protections alleged in paragraph 17 of the Complaint.

18. The argument asserted in paragraph 18 of the Complaint is speculation rather than an allegation of fact as required under the Civil Rules, and is accordingly denied.

19. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 19 of the Complaint.

20. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in the first sentence of paragraph 20 of the Complaint. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the "national trademark" assertion in the second sentence of paragraph 20 or whether plaintiff has taken all steps required to preserve the "trademark" rights alluded to in that sentence, and therefore denies that same.

21. The allegations in paragraph 21 of the Complaint assert speculation, legal arguments, and legal conclusions rather than allegations of fact, and

therefore need not be admitted or denied. Moreover, the *Storer* decision characterized in this paragraph speaks for itself, and thus this paragraph's partial characterization of it is denied.

22. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22, and therefore denies the same.

23. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 23 of the Complaint.

24. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 24 of the Complaint. Moreover, this paragraph's arguments relating to "the adulteration of the LP's nomination process" are irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872 does not select the candidate or nominee for any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*.

25. The argument asserted in paragraph 25 of the Complaint alleges a hypothetical rather than allegation of fact to be admitted or denied under the Civil Rules.

26. The allegations in paragraph 26 of the Complaint assert legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, the *Williams* decision selectively quoted in this

paragraph speaks for itself, and the legal conclusion proposed by this paragraph is not an accurate characterization of the law as it relates to this case.

27. The allegations in paragraph 27 of the Complaint assert legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, the cases and statute selectively quoted and characterized in this paragraph speak for themselves, and the legal conclusions proposed by this paragraph are not an accurate characterization of the law as it relates to this case. This defendant-intervenor denies that Initiative 872 is arbitrary and denies due process rights for LP candidates.

28. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 28.

29. This defendant-intervenor admits a controversy exists concerning the Complaint's claim that our State's primary system under Initiative 872 is unconstitutional, but for the reasons noted in this Answer, denies the remaining allegations and assertions in paragraph 29 of the Complaint.

30. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 30 of the Complaint.

31. This defendant-intervenor denies the argument in paragraph 31 of the Complaint that statutes which were superceded by the primary system established by the enactment of

Initiative 872 "remain valid law" and therefore cannot be "overridden" by the Secretary's rules.

32. The allegation in paragraph 32 of the Complaint asserts a legal conclusion rather than an allegation of fact, and is therefore denied.

33. The allegation in paragraph 33 of the Complaint asserts a legal conclusion rather than an allegation of fact, and is therefore denied.

34. The allegation in paragraph 34 of the Complaint asserts a legal conclusion rather than an allegation of fact, and is therefore denied.

35. This defendant-intervenor admits that Initiative 872 does not have an express severability clause, but denies the assertion in paragraph 35 of the Complaint that the *entire* Initiative is therefore void if *any portion* of it is unconstitutional.

36. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 36 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

37. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 37.

38. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 38 of the Complaint.

39. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 39 of the Complaint.

40. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 40 of the Complaint.

41. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 41 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

42. The Complaint's Prayer For Relief requires no reply under the Civil Rules, and is therefore denied.

43. All allegations in the Complaint not specifically admitted above are denied.

II. DEFENSES

By way of further answer to the Complaint, and as further defenses, this defendant-intervenor alleges:

44. The Complaint fails to state a claim upon which relief can be granted.

45. To the extent the Complaint alleges "as applied" rather than "facial" invalidity of the upcoming September 2005 primary, this action is prematurely brought.

46. To the extent that the Complaint alleges any sort of trademark or tradename type protection of the party "label", the Complaint's allegations are barred by, e.g., the doctrines of laches, waiver, and estoppel. To the extent that these plaintiffs are alleging rights based on their alleged national "trademark" of the libertarian label, this defendant-intervenor further answers that these

plaintiffs have not pled or demonstrated their prior conduct protecting that label from unauthorized use under the trademark laws.

47. To the extent that the Complaint alleges any sort of equitable protection of the party "label" or entitlement to a Court Order imposing the previously existing "Montana" primary system upon the State of Washington, the Complaint's allegations are barred by, e.g., the doctrines of unclean hands.

III. PRAYER FOR RELIEF

Having fully Answered the Complaint, this defendant-intervenor respectfully requests the following relief from this Court:

1. Entry of a judgment dismissing the Complaint with prejudice, and denying the Complaint's requested injunctive, declaratory, and other relief;

2. Entry of a judgment declaring that Washington's election law as established by Initiative 872 does not deprive the plaintiffs of any legally cognizable rights protected by the constitution or laws of the United States or the State of Washington;

3. Entry of a judgment awarding defendant-intervenor recovery of its costs and attorney fees to the full extent allowed by law;

4. Permission to amend the pleadings to add additional matters verified during discovery or to conform to the evidence offered at the time of hearing or trial; and

5. Such other relief as the Court deems proper, just, or equitable.

RESPECTFULLY SUBMITTED this 10th day of June, 2005.

FOSTER PEPPER &
SHEFELMAN PLLC

Thomas F. Ahearne, WSBA No. 14844
Attorneys for Defendant-Intervenor
WASHINGTON STATE GRANGE

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, WASHINGTON DEOMCRATIC CENTRAL COMMITTEE, et al., Plaintiff Intervenors LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Plaintiff Intervenors v. DEAN LOGAN, King County Records & Elections Division Manager, et al., Defendants, STATE OF WASHINGTON, et al., Defendant Intervenors WASHINGTON STATE GRANGE, Defendant Intervenors.	NO. CV05-0927Z WASHINGTON STATE GRANGE'S ANSWER TO PLAINTIFF REPUBLICANS' COMPLAINT

I. ANSWER

In answer to the Complaint For Declaratory Judgment And For Injunctive Relief Regarding Initiative 872 And Primary Elections ("Complaint") alleged by the plaintiff Republicans in this case, the defendant-intervenor Washington State Grange answers and alleges as follows:

1. The allegations in paragraph 1 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, those assertions are not even an accurate summary or characterization of the law.

2. The allegations in paragraph 2 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, the assertions relating to "the selection of a political party's candidates and nominees" are irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872 does not select the candidate or nominee for any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*.

3. This defendant-intervenor admits that our State's voters overwhelmingly enacted Initiative 872, which became effective on or about December 2, 2004. The remaining allegations in paragraph 3 of the Complaint assert self-serving legal arguments and legal conclusions concerning that enactment, rather than allegations of fact, and therefore need not be admitted or denied. Moreover, those assertions are not even an accurate summary or characterization of the law.

4. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 4 of the Complaint.

5. This defendant-intervenor denies the assertions in paragraph 5 that "Initiative 872 is unconstitutional" and that "this is an action to protect the First Amendment rights of the Party and

its adherents to advocate and promote their vision for the future without censorship or interference by the State and County Auditors". Instead, this is an action by the Political Parties to quash the First Amendment and political speech rights of persons running for public office, to nullify the right of Washington voters to enact their laws by Initiative, and to entice judicial activism by demanding that this federal court impose the type of primary system that the Political Parties could not succeed in getting our State Legislature or our State's voters to enact.

6. This defendant-intervenor admits that this case involves a federal question and that jurisdiction is proper in this Court. The remaining allegations in paragraph 6 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied.

7. This defendant-intervenor admits that venue lies within this Western District of Washington at Seattle.

8. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint, and therefore denies them. Moreover, what is intended by several allegations in this paragraph (e.g., those relating to "powers inherent" and "functions inherent" in a political party) are too vague to meaningfully admit or deny.

9. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the

allegations in paragraph 9 of the Complaint, and therefore denies them.

10. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint, and therefore denies them.

11. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint, and therefore denies them.

12. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint, and therefore denies them.

13. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint, and therefore denies them.

14. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint, and therefore denies them.

15. This defendant-intervenor admits the defendant County Auditors named in paragraph 15 of the Complaint have the responsibilities provided by Washington law. On information and believe, this defendant-intervenor also admits the residence location of those Auditors as alleged in paragraph

15. In further Answer to the Complaint's identification of the defendants in paragraph 15, this defendant-intervenor notes that the Court has granted the State of Washington, the Washington Secretary of State Sam Reed, the Washington Attorney General Rob McKenna, and the Washington State Grange permission to intervene in this action as defendant-intervenors. The defendant-intervenor Washington State Grange was the proponent of Initiative 872.

16. This defendant-intervenor admits that the primary established by Initiative 872 will be conducted in September 2005, but at this time is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint concerning the County Auditor quotation stated in the last sentence of that paragraph. The remaining allegations in paragraph 16 assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Those assertions, moreover, are not even an accurate summary or characterization of the law – for they set forth quotations out of context and without acknowledgment of provisions superceded by Initiative 872. More specifically, the election system established by the voters' adoption of Initiative 872 defines "partisan office" as "a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name", and establishes that "any party or independent preferences are shown for the information of voters only". [Initiative §4 & §7(3).]

Contrary to the legal arguments asserted in this paragraph of the Complaint, the primary system established by the voters' adoption of Initiative 872 does *not* select the candidate or nominee for any political party, but rather determines the two candidates or nominees for the general election ballot, while allowing each candidate to disclose to the voters his or her own political party preference.

17. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 17 of the Complaint.

18. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 18 of the Complaint.

19. This defendant-intervenor admits that Initiative 872 and the voters pamphlet referred to in paragraph 19 speak for themselves. The remaining allegations in paragraph 19 assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Those assertions, moreover, are not even an accurate summary or characterization of the law. Contrary to the legal arguments asserted in this paragraph of the Complaint, the primary system established by the voters' adoption of Initiative 872 does *not* select the candidate, nominee, or "standard-bearer" for any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*.

20. The legal argument asserted in paragraph 20 of the Complaint is too vague to determine if it contains a factual allegation to be admitted or denied, and this defendant-intervenor accordingly denies it.

21. The allegations in paragraph 21 of the Complaint primarily assert self-serving legal arguments and legal conclusions rather than allegations of fact. Moreover, this paragraph's arguments relating to "the adulteration of the Party's nomination process" are irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872 does not select the candidate or nominee for any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*. Moreover, the arguments in this paragraph relating to "candidates' messages" and the political parties' complaints about the prospect of the voters (rather than the Political Parties) selecting the two candidates for the general election ballot confirm this defendant-intervenor's prior observation that this is really an action by the Political Parties to quash the First Amendment and political speech rights of persons running for public office, and to secure from this federal court the type of primary system that the Political Parties could not succeed in getting our State Legislature or our State's voters to enact.

22. The allegation in paragraph 22 of the Complaint asserts a self-serving legal argument and legal conclusion rather than an allegation of fact, and therefore need not be admitted or denied. Moreover, that assertion is not even an accurate summary or characterization of the law since it ignores the superceding effect of the enactment of Initiative 872.

23. The allegations in paragraph 23 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover,

those assertions are not even an accurate summary or characterization of the law since they ignore the superceding effect of the enactment of Initiative 872. The election system established under Initiative 872 does not deny the plaintiff equal protection of the law as suggested by the section heading above this paragraph of the Complaint.

24. The *Reed* decision selectively quoted and characterized in paragraph 24 of the Complaint speaks for itself, and therefore that paragraph's self-serving partial characterization of that Court decision is denied.

25. The *Jones* and *Reed* decisions selectively quoted and characterized in paragraph 25 of the Complaint speak for themselves, and therefore that paragraph's self-serving partial characterization of those Court decisions is denied.

26. This defendant-intervenor denies the allegations in the first sentence of paragraph 26, and in response to the second sentence admits that the Initiative and voters pamphlet speak for themselves.

27. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint, and therefore denies them. In any event, however, this paragraph's allegation concerning "candidates of the Party" is irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872 does not select the candidate of any *political party*. Instead, it determines the two candidates or nominees for the *general election ballot*.

28. The allegations in paragraph 28 of the Complaint concerning plaintiffs' "rights" assert self-serving legal arguments and legal conclusions rather than allegation of fact, and therefore need not be admitted or denied. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining allegations in paragraph 28 of the Complaint.

29. The allegations in paragraph 29 of the Complaint concerning plaintiffs' "rights" assert self-serving legal arguments and legal conclusions rather than allegation of fact, and therefore need not be admitted or denied. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining allegations in paragraph 29 of the Complaint.

30. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 30.

31. This defendant-intervenor admits a controversy exists concerning the Complaint's claim that our State's primary system under Initiative 872 is unconstitutional, but for the reasons previously noted in this Answer, denies the remaining allegations and assertions in paragraph 31 of the Complaint.

32. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 32 of the Complaint.

33. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 33 of the Complaint.

34. This defendant-intervenor admits that Initiative 872 does not have an express severability clause, but denies the assertion in paragraph 34 of the Complaint that the *entire* Initiative is therefore void if *any portion* of it is unconstitutional.

35. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 35 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

36. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 36.

37. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 37 of the Complaint.

38. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 38 of the Complaint.

39. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 39.

40. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 40 of the Complaint.

41. This defendant-intervenor denies the allegations in paragraph 41 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

42. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 42.

43. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 43 of the Complaint.

44. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 44 of the Complaint.

45. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 45 of the Complaint.

46. This defendant-intervenor denies the allegations in paragraph 46 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

47. The Complaint's Prayers For Relief require no reply under the Civil Rules, and are therefore denied.

48. All allegations in the Complaint not specifically admitted above are denied.

II. DEFENSES

By way of further answer to the Complaint, and as further defenses, this defendant-intervenor alleges:

49. The Complaint fails to state a claim upon which relief can be granted.

50. To the extent the Complaint alleges "as applied" rather than "facial" invalidity of the

upcoming September 2005 primary, this action is prematurely brought.

51. To the extent that the Complaint alleges any sort of trademark or tradename type protection of the party "label", the Complaint's allegations are barred by, e.g., the doctrines of laches, waiver, and estoppel.

52. To the extent that the Complaint alleges any sort of equitable protection of the party "label" or entitlement to a Court Order imposing the previously existing "Montana" primary system upon the State of Washington, the Complaint's allegations are barred by, e.g., the doctrines of unclean hands.

53. All allegations in the Complaint not specifically admitted above are denied.

III. PRAYER FOR RELIEF

Having fully Answered the Complaint, this defendant-intervenor respectfully requests the following relief from this Court:

1. Entry of a judgment dismissing the Complaint with prejudice, and denying the Complaint's requested injunctive, declaratory, and other relief;

2. Entry of a judgment declaring that Washington's election law as established by Initiative 872 does not deprive the plaintiffs of any legally cognizable rights protected by the constitution or laws of the United States or the State of Washington;

3. Entry of a judgment awarding defendant-intervenor recovery of its costs and attorney fees to the full extent allowed by law;

4. Permission to amend the pleadings to add additional matters verified during discovery or to conform to the evidence offered at the time of hearing or trial; and

5. Such other relief as the Court deems proper, just, or equitable.

RESPECTFULLY SUBMITTED this 10th day of June, 2005.

FOSTER PEPPER &
SHEFELMAN PLLC

Thomas F. Ahearne, WSBA No. 14844
Attorneys for Defendant-Intervenor
WASHINGTON STATE GRANGE

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al., Plaintiff Intervenors, LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Plaintiff Intervenors, vs. DEAN LOGAN, King County Records & Elections Division Manager, et al., Defendants, STATE OF WASHINGTON, et al., Defendant Intervenors, WASHINGTON STATE GRANGE, Defendant Intervenors.	**No. CV05-0927-TSZ** **STIPULATED STATEMENT OF LEGAL ISSUES**

The undersigned, on behalf of the plaintiffs and plaintiff intervenors and the defendants and

defendant intervenors, respectively, have met and conferred and hereby stipulate that the following legal issue will be addressed in the parties' cross-motions for summary judgment, in the order stated:

1. Does the primary system established by Initiative 872 nominate political party candidates for public office?

2. If the primary system under Initiative 872 does not nominate political party candidates for public office, does each political party have the right to select for itself the only candidate who will be associated with it on either a primary or general election ballot?

3. If the primary system under Initiative 872 nominates political party candidates for public office, does Initiative 872 violate the First Amendment by compelling a political party to associate with unaffiliated voters and members of other political parties in the selection of its nominees?

4. Does Washington's filing statute impose forced association of political parties with candidates in violation of the parties' First Amendment associational rights?

5. Does Initiative 872's limitation of access to the general election ballot to only the top two vote-getters in the primary for partisan office unconstitutionally limit ballot access for minor political parties?

The political parties may address an additional issue related to ballot access that the

parties to this lawsuit could not reach agreement upon. The Libertarian Party may address additional issues unique to its status as a minor political party.

DATED this 10th day of June, 2005.

John J. White Jr.

John J. White, Jr., WSBA #13682
Kevin B. Hansen, WSBA #28349
of Livengood, Fitzgerald &
Alskog, PLLC, Attorneys for
Plaintiffs
121 Third Avenue
P.O. Box 908
Kirkland, WA 98083-0908
Ph: 425-822-9281
Fax: 425-828-0908
E-mail: white@lfa-law.com
Hansen@lfa-law.com

ROB MCKENNA
Attorney General

James K. Pharris

James K. Pharris, WSBA #5313
Sr. Assistant Attorney General
Attorneys for State of
Washington Intervenors

U.S. District Court

WESTERN DISTRICT OF WASHINGTON

Notice of Electronic Filing

The following transaction was received from CC, entered on 6/14/2005 at 11:16 AM PDT and filed on 6/7/2005

Case Name: Washington State Republican Party et al v. Logan et al

Case Number: 2:05-cv-927

Filer:

Document Number: 45

Docket Text:

MINUTE ENTRY for proceedings held before Judge Thomas S. Zilly - Dep Clerk: *KC;* Pla Counsel: *John White, Kevin Hansen, David McDonald;* Def Counsel: *Jim Pharris, Tom Ahearne, Mike Sullivan, David Alvarez, James Baker, Ronald Marshall, Tom Kuffel, Tad Seder, Gordon Sivley, Stew Menefee, Quinn Posner, Richard Shepard, Steven Kinn;* CR: *Sue Palmerton;* **Status Conference** held on 6/7/2005. The Court grants motion to intervene by State of Washington, docket no. 22. The Court grants motion to intervene by Washington State Democratic Central Committee, docket no. 2. The Court grants Libertarian party's motion to intervene, docket no. 3. The Court grants the oral motion to intervene by Washington State Grange. The following briefing schedule is adopted: opening brief to be filed by June 17,2005. Responsive brief to be filed by July 1,2005. Reply brief to be filed by July 6, 2005. The opening brief shall not exceed 40

pages. Responsive brief shall not exceed 50 pages. The reply brief shall not exceed 12 pages. A hearing is scheduled W ed., JULY 13, 2005 at 9:00 a.m. The Court directs counsel to submit a written report by close of business Friday, June 10,2005 stating the issues. In the event any party wishes a status conference, they may contact the clerk. The Court continues the motion for preliminary injunction to July 13, 2005 (docket no. 7).(CC,)

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, v. DEAN LOGAN, King County Records & Elections Division Manager, et al., Defendants, WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, et al., Plaintiff-Intervenors, LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Plaintiff-Intervenors, STATE OF WASHINGTON, et al., Defendant-Intervenors, WASHINGTON STATE GRANGE, Defendant-Intervenors.	No. C05-0927Z DECLARATION OF PAUL J. BERENDT IN SUPPORT OF PLAINTIFF-INTERVENOR WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE'S MOTION FOR SUMMARY JUDGMENT **Noted for Oral Argument:** **July 13, 2005**

I am over the age of 18 years, a U.S. citizen, resident of the State of Washington, and the elected Chair of the Washington State Democratic Central Committee, the governing body of the Washington State Democratic Party ("Party"), and the political and administrative head of the Party pursuant to its Charter and Bylaws. I am also the elected Chair of the Washington State Democratic Committee as defined in RCW 29A.80.020. I have firsthand knowledge of the matters stated herein and if called to testify, could and would competently do so.

1. I have been directly involved in Party affairs and partisan elections in Washington State for over twenty years. In that time I have participated in the planning and execution of many campaigns and observed many more. I am well aware of the practical effects of Washington's primary statutes upon campaigns and upon the Party.

2. From 1980-1982, I worked in the office of the State Chair. My duties included assisting in all aspects of party-building and in the recruitment and support of candidates for public office who would be affiliated with the Party. From 1983-1988, I worked as a legislative policy analyst in the State House of Representatives. From 1989-1992, I worked for the Senate Democratic Caucus in Olympia providing policy analysis and legislative support. During 1993 and 1994, I was a self-employed political consultant specializing in State Legislative campaigns. Since January 1995, I have been the head of the Party in Washington and have been directly involved in all aspects of the Party's organization and its attempts to achieve its goals.

3. Based upon my experience and observation, it is my opinion that the primary system imposed upon the Party by Initiative 872 will materially interfere with the Party's achievement of its goals and will place substantial burdens upon the Party.

4. The Party has several fundamental goals, including rallying its members around common issues, articulating to the general populace through its standard bearers the merits of those issues in order to expand support for those issues and to expand the Party's base, electing candidates who support the Party's issues and working with those candidates after election to translate the Party's issues into government policy. The Party is organized according to its Charter and in conformance with the Charter of the Democratic Party of the United States. The goals of the Democratic Party are set forth in its Charter. The Charter was adopted by the Party at its Convention in 1976 and was last amended in 2004. The Charter defines the reasons the Party exists, the membership of the Party, its basic organization and the basic principles for which it stands and which are fundamental to its character. A copy of the Charter in its current form is attached to my declaration as Exhibit A.

5. The Party is composed of "...All residents of the State of Washington who are willing to support the principles and goals of the Democratic Party as expressed in the Charter and wish to be known as Democrats." Charter, Article I.B. The goals of the Party include adopting statements of policy to serve as standards for Democratic elected

officials and goals for the people of the state, nominating and assisting in the election of Democratic candidates at all levels who support the goals of the Party, and working with elected Democratic public officials at all levels to achieve the goals of the Democratic Party. The close relationship contemplated by the Charter is fostered by requiring that the selection of candidates using the party name be done by voters who affiliate with the Democratic Party. Charter, Article VII.(C) (as amended). The Democratic Party, through its state and local conventions, develops and publishes its positions on various issues in advance of the candidate filing period for primary and general elections.

6. In furtherance of its political strategies and Charter goals, the Party has adopted Nominating Rules. A copy of the Nominating Rules in their current form is attached as Exhibit B. Under Initiative 872, our general election candidates are chosen in a public primary but the election officials charged with administering the primary are barred from limiting participation in our primary to those who affiliate with the Democratic Party.

7. The primary system contemplated under Initiative 872, with its open voting and ability for multiple candidates to run under the Democratic label without consent from the Party or selection in accordance with its Charter substantially interferes with the Party's pursuit of its political strategies and Charter-defined goals. . n all fundamental ways that are important to the Party, Initiative 872 is indistinguishable from Washington's previous "blanket" primary that was invalidated by the Ninth Circuit Court of Appeals in 2003. Like the previous

blanket primary, Initiative 872: (1) allows candidates to self-select their party identification when filing for office, without the participation of the political parties; (2) identifies candidates on the primary ballot with their party affiliation; (3) allows primary voters to select the candidates who will advance to the general election for any office without regard to party affiliation of the voter; (4) allows the use of an open, consolidated primary ballot that is not limited by political party and that facilitates crossover voting; and (5) advances major party candidates from the primary to the general election based on open, "blanket" voting.

9. In addition, by allowing only the "top two" vote getters to advance to the general election ballot, Initiative 872 further dilutes and weakens the Party's ability to effectively communicate its message and maintain Party loyalty. This scheme may well restrict the choices legitimately available to voters on their general election ballots. For example, when multiple Democratic candidates appear on a primary ballot, in some cases this will "split" the overall Democratic vote sufficiently to allow no Democratic candidate to advance to the general election, even when the Party as a whole receives majority support in the primary. If four Democratic candidates split 60% of the primary vote, and two Republican candidates split the remaining 40%, the two Republicans would advance. As a result, Initiative 872 strongly discourages the Party from putting forth multiple candidates to compete in a primary election on the one hand but on the other makes it impossible for the Party to avoid having multiple candidates under its banner by forcing the

Party to accept self-starters and mischief making partisans from other parties who file under false colors.. This limiting effect will dilute or restrict voter exposure to Party candidates and will impede intra-Party debate on the issues. Given that electoral politics is one of the primary ways that the political parties advocate for and advance their goals and ideals, the restriction on general election ballot access further burdens the Party in the exercise of its First Amendment prerogatives.

10. Allowing political candidates to self-select Democratic Party identification for the primary ballot will harm the Party in other ways. The Party has expended considerable time and expense to develop a coherent set of goals and principles that guide the Party, and to create a corresponding "brand awareness" among the electorate for candidates identified as Democrats. Allowing any candidate, even those that are hostile to the Party, to misappropriate the Party name and appear on the ballot as a Democratic candidate will undermine this name association that has built up in loyal Party voters' mind. I am aware of at least one prior candidate for public office, long time Republican activist Thomas Lowry, who had sought the Democratic nomination for the State Legislature because of the difficulty he perceived in challenging the Republic incumbent in the blanket primary. He ran for and won the Democratic nomination twice, without ever speaking to a Democratic Party group or obtaining and Democratic endorsements. Initiative 872, by allowing such "raider" candidacies to continue, will dilute the Party's ability to maintain

a coherent message using the valuable Democratic Party name.

11. The requirement that Democratic candidates be selected by voters who affiliate with the Democratic Party, at least for primary day, is fundamental to the Party's ability to achieve its goals. It allows the Party to mobilize its voters and stronger supporters while avoiding the damaging effects of allowing supporters of other parties to influence, perhaps even determine, the selection of our candidates. Because it prohibits implementation of this basic policy, Initiative 872 greatly obstructs the Party's furtherance of its goals.

12. The damage that will be done to the Party by the Initiative 872 primary system is not limited to permitting ticket-splitters to select the Party's candidates. In many cases the selection of our candidates will be affected by voters from opposition parties, and our voters will likely affect the selection of the other party's candidates. I am told by my own Party members that this has happened under the old blanket primary system in jurisdictions which are perceived as being extremely difficult for my Party's candidates to win. Because my Party's voters have the option to vote in the other party's primary, and perceive that that party's primary is "where the choice will be made," they opt to vote in the other party's primary, depriving their own candidates of support. The Party's candidates, having been deserted, do even worse in the primary than the Party's base of support and it soon becomes much more difficult, if not impossible, to recruit strong candidates who might build the minority party into a competitive party. I do not doubt that

my counterpart Chair experiences similar difficulties in mobilizing support in his party.

13. On June 26, 2000, the United States Supreme Court ruled that the California blanket primary was unconstitutional. In support of its decision, the opinion stated that as many as 25 percent of voters in Washington cross-over to participate in another party's primary. These cross-over voting figures are consistent with my experience as a Party official and with demographic analyses of past primary returns that I have seen used by candidates in targeting their efforts. If the Initiative 872 primary is allowed to proceed there is every reason to expect that the same level of cross-over voting will occur since the primary is, for all intents and purposes, the same as the blanket primary from the voter's point of view.

14. It is not only the Party that suffers as a result of the current primary system: The public as a whole suffers because the primary will result in less choices for the voter. Rather than a general election devoted to choosing between candidates representing competing philosophies, the public will often find itself presented with a general election in which it cannot tell the difference between the philosophies of the candidates, no matter what party label they carry. A major cause of this, in my opinion, is that the candidates of both parties will be required to spend most of their time campaigning to the same small group of ticket-splitters rather than to their respective philosophical bases.

15. The burdens placed upon our party building by the Initiative 872 primary system are

cumulative. Each passing year will be worse than the one before as candidates will increasingly focus their efforts on ticket-splitters and non-members of our Party. Consequently, candidates selected through Initiative 872 to be Democratic standard bearers will sometimes vary from or contradict the positions officially taken by the Party to a far greater extent than would occur if those candidates selected in primaries in which participation is limited to voters who support the Democratic Party. This will result in a misapprehension of the Party's position on various issues. Over time, the Party's message will become further blurred and it is more difficult for voters to perceive a benefit from

electing a Democrat as opposed to a member of another party.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 17th day of June, 2005 at Seattle, Washington.

_____

Paul Berendt
Chair, Washington State
Democratic Party

EXHIBIT A

Charter of the Democratic Party of the State of Washington

(As Amended by State Convention 6/5/2004)

Preamble

We, the Democrats of the State of Washington, believe in the concepts expressed in the Declaration of Independence and the Constitution of the United States – that all power to govern resides with the people. In accordance with the National Charter of the Democratic Party of the United States, we organized and pledge ourselves to promote a truly representative Party open to all who support its principles.

We further pledge to make every effort to encourage maximum participation in the political process and to protect individuals' rights, civil liberties, our environment and social and economic justice for all.

Upon these basic principles we do hereby adopt this Charter of the Democratic Party of the State of Washington.

Article I

Democratic Party of the State of Washington

A. The Democratic Party of the State of Washington exists to:

1. Adopt and promote statements of policy to serve as standards for Democratic elected officials and goals for the people of the state.
2. Nominate and assist in the election of Democratic candidates at all levels who support the goals of the Party.

3. Administer the Party organization in accordance with rules and standards which will facilitate achieving the goals of the Party.
4. Establish standards and rules of procedure to afford all members of the Democratic Party full, timely and equal opportunities to participate in decisions concerning the selection of candidates, the formulation of policy, and the conduct of other Party affairs without discrimination on the basis of sex, race, age (except where state and federal law precludes participation), religion, sexual orientation, economic status or ethnic origin.
5. Promote fair campaign practices and fair adjudication of disputes.
6. Raise and disburse monies needed for the continuing operation of the Party.
7. Work with the elected Democratic public officials at all levels to achieve the goals of the Democratic Party.
8. Encourage and support codes of political ethics governing all public officials in the conduct of their offices.
9. Encourage voter registration and voting.

B. The Democratic Party of the State of Washington shall be composed of:

1. Democratic precinct committee officers.
2. Elected Democratic officials.

3. Members of Democratic county, legislative district, congressional district and state Party organizations.
4. All residents of the State of Washington who are willing to support the principles and goals of the Democratic Party as expressed in the Charter and wish to be known as Democrats.
5. Members of those Democratic organizations that are recognized or chartered by the state central committee.

Article II

State Democratic Convention

A. The State convention is the highest authority of the Democratic Party of the State of Washington, subject to the provisions of this Charter.

B. The purpose of the convention shall be to adopt a state Party platform and to perform such functions as are inherent to such an organization.

C. The State Democratic Convention shall be called by the state central committee once every two (2) years.

D. The state convention shall adopt its own rules.

Article III

Washington State Democratic Central Committee

A. The Washington State Democratic Central Committee, also called "state central committee" shall be the governing body of the Democratic Party of the State of Washington.

B. Members. The state central committee members shall be the state committeewoman and state committeeman elected by each county central committee and by each legislative district organization. Members shall be elected to terms of two (2) years. They shall have an equal voice and vote. In the event that a county central committee or a legislative district organization fails to elect such a representative, the chair (or the chair's designee) shall be the representative on the state central committee.

C. Special Members. In addition, the state central committee shall have Special Members. Except in the election of officers and on the adoption or amendment of charter or bylaws, special members shall have equal voice and vote as other members in affairs of the state central committee when in personal attendance. Special Members have no proxy. The Special Members of the state central committee shall be:

1. The National Committee members elected from the State of Washington;
2. The Governor of the State of Washington if the Governor is a Democrat;
3. United States Senators from the State of Washington if Democrats;
4. United States Representatives from the State of Washington if Democrats;
5. The Leader of the Washington State Democratic Caucus;
6. The Leader of the Washington State House of Representatives Democratic Caucus;

7. A representative of the Young Democrats of Washington;

8. A representative of the Federated Democratic Women's Clubs;

9. Elected officers of the state central committee; and

10. The Chair of the Organization of County and District Chairs. In the case of the Chair of the Organization of County and District Chairs, the vice Chair of that organization may serve as the chair's alternate with vote.

D. Organizational meeting. The state central committee shall hold its organization meeting in the first quarter of each odd-numbered year, following legislative district and county organizational meetings. The outgoing Chair of the Democratic Party of the State of Washington shall issue the call to the organizational meeting. In the absence of such a call, any ten (10) members of the state central committee may call and convene the organizational meeting. Timely notice shall be sent to all members. At its organizational meeting, the state central committee shall elect a chair who shall be known as the Chair of the Democratic Party of the State of Washington (and also called the "state chair"). At this meeting, the state central committee shall also elect a vice chair and such other officers specified in the bylaws, or in the rules of the state central committee.

E. Meetings, officers, finances.

1. The state central committee shall meet at least four (4) times per year.

2. The officers of the state central need not be members of the committee. Officers of the outgoing state central committee, unless otherwise qualified, shall not vote in the election of new officers.

3. The National Committeemen and Committeewomen shall be elected by the state central committee for terms of four (4) years during each Presidential election year.

4. The state central committee shall be the sole Party organization authorized to collect and disburse funds in behalf of the Democratic Party of the State of Washington, except as otherwise authorized by the state convention. It shall report the financial conditions of the Party at each state convention as well as the political activities of the state Party since the previous state convention.

Article IV

Statutory State Committee

A. The statutory state committee shall be organized according to state law (RCW 29.42.020).

B. It shall perform only those duties explicitly specified by RCW 29.42.020 (1) through (4). The statutory state committee shall adopt bylaws which shall delegate those duties to the state central committee which shall provide that the Chair of the Democratic Party of the State of

Washington shall be the chair of the statutory state committee and that the Vice Chair elected by the state central committee shall be the vice chair of the statutory state committee.

C. The statutory state committee shall be subject to the overriding Party authority of this Charter, the state convention, and of the Washington State Democratic Central Committee.

Article V

Other Organizations or Elected Officials Authorized to Function Continuously

A. General: These organizations and officials, along with the state central committee, are authorized by, state statute, charter, or custom to function continuously to govern Party affairs and to make Party policy; they are not directly involved in selecting delegates. All such organizations shall be constituted and shall conduct business according to this Charter and other provisions adopted pursuant to the authority of this Charter. State laws relating to Party operations shall be observed unless in conflict with this Charter and other provisions adopted pursuant to this Charter.

B. Precinct committee officers

1. Precinct committee officers shall be elected, appointed, or recalled according to state law, this Charter and other provisions adopted pursuant to the authority of this Charter.

2. Vacancies in the office of precinct committee officer that exist because of failure to elect at state general election shall not be filed until

after the reorganization of the county central committee and/or legislative district organization.

3. Vacancies that occur in this office by reason of death, resignation, permanent change of residence, change of voter registration from the precinct, by recall of the incumbent, or because of failure to elect, shall be filed by appointment according to a procedure that affords every Democrat registered to vote in the precinct fair and equal opportunity.

C. Legislative District Organizations

1. The legislative district organization shall be the governing body of the legislative district Democratic party and shall have the responsibility for conducting Party affairs at the legislative district level. It shall be composed of all elected and appointed precinct committee officers.

2. Each legislative district organization shall be organized according to state law, the Charter and Bylaws of the Democratic Party of the State of Washington, and other provisions adopted pursuant to the authority of the Charter.

D. County Central Committee

1. The county central committee shall be the governing body of the county Democratic Party and shall have the responsibility for conducting Party affairs at the county level. It shall be composed of all elected and appointed precinct committee officers.

2. Each county central committee shall be organized according to state law, the Charter and Bylaws of the Democratic Party of the State of Washington, and other provisions adopted pursuant to the authority of the Charter.

3. In counties with legislative district organizations, the county central committee may establish a county executive board. Such a board shall be fairly apportioned.

E. Congressional District Organizations

1. Any congressional district may organize for purposes consistent with this Charter.

F. Judicial Review Board

1. A Judicial Review Board shall be established.

2. It shall consist of two (2) members elected by each congressional district caucus during each state convention. State committee members, county chairs, and district chairs shall not be eligible to serve.

3. Members of the board shall take office the following January 1st and shall serve for two (2) years.

4. A quorum shall be 60% of the members and no proxies or alternates shall be allowed.

5. Vacancies shall be filled by election by a caucus of the state central committee members from the congressional district having a vacancy.

6. This board shall consider questions of interpretation of the Charter, bylaws, delegate selection rules, affirmative action plans, and other adopted rules of the Democratic Party of the State of Washington and its component organizations. It shall make its recommendations in writing to each state convention before the convention votes on any of its recommendations and before new members are elected to the board.

7. The board shall not function as a credentials or rules committee, although its findings and recommendations shall be considered relevant evidence in a credentials challenge.

Article VI.

Party Organization Convened Periodically

A. General

1. All periodic organizations are part of the delegate selection process.

2. In addition to the selection of delegates, caucuses and conventions, except congressional district caucuses, may adopt platforms and resolutions as desired, and perform other functions inherent in such an organization.

3. The national and state platforms and resolutions shall serve as the policy standards for the state Democratic Party. The national, state, county and legislative district platforms and resolutions shall serve as policy standards for the county and legislative district Democratic Party organizations.

4. Caucuses and conventions shall meet in even-numbered years.

B. Delegate Selection Rules

1. Delegate selection rules adopted by the state central committee shall govern the precinct, legislative district and congressional district caucuses, and county and state conventions.

2. Delegate selection rules adopted by any Democratic Party organizations shall conform to this Charter and the Charter, By-Laws and Delegate Selection Rules of the Democratic party of the United States. State laws relating to the selection of delegates to the National Convention shall be observed unless in conflict with the national or State Charters or other provisions adopted pursuant to those Charters.

3. Any Democrat has the right to challenge any delegate or alternate to the county and state conventions or to the legislative and congressional district caucuses in accordance with the rules. No challenged delegate may vote on any matter pertaining to his or her own challenge.

C. Precinct Caucuses

1. Precinct caucuses shall elect delegates to the county convention and/or legislative district caucuses.

2. Precinct caucuses shall be held in accordance with pertinent rules; the state chairperson shall issue the call to the caucus.

3. There shall be no registration free nor collection of money before or during a caucus, except that voluntary contributions may be solicited or collected..

D. Legislative District Caucuses

1. The legislative district caucus shall elect delegates to the state convention. The same delegates shall also attend the appropriate congressional district caucus, if applicable.

2. The legislative district caucuses shall be composed of delegates elected at the precinct caucuses.

E. County Conventions

1. The county convention shall be composed of delegates elected at the precinct caucuses.

2. The county convention shall adopt a county platform and elect delegates to the congressional district caucus and state convention if delegates are to be elected at the county convention.

F. Congressional District Caucus

1. The congressional district caucus shall elect the maximum number of National Convention delegates permitted by National Delegate Selection Rules.

2. Congressional district caucuses shall be composed of delegates to the state convention.

Article VII

Basic Principles

A. Open Party

1. The Democratic Party of the State of Washington shall be open to all who support the Party and wish to be known as Democrats.
2. All members of the Party shall enjoy equal rights, protections, and opportunities in all governing documents and in all proceedings of the Party at all levels.
3. Discrimination on the basis of sex, race, age (except state and federal law precludes participation), religion, sexual orientation, economic status or ethnic origin is prohibited in the conduct of Party affairs at all levels.
4. To the greatest extent possible all representatives shall be chosen from elected members.
5. The time, the place, and a description of the legal and practical procedures of all delegate selection and policy making or governance meetings shall be publicized fully and in a manner to assure timely notice to all interested persons.

B. Full Participation

1. The Democratic Party of the State of Washington reaches out and seeks to bring all people and ideas into its affairs.
2. In order to encourage full participation by all Democrats of the State of Washington with

particular concern for minority groups, in the delegate selection process and in all Party affairs, the state and county Democratic Party organizations shall adopt and implement affirmative action programs.

3. Affirmative Action: Performance under an approved Washington State affirmative action program shall be considered relevant evidence in the challenge of any county delegation. If a county has adopted and implemented an approved and monitored state affirmative action program, the county and legislative district shall not be subject to challenges based solely on delegate composition. This goal shall not be accomplished either directly or indirectly by the imposition of mandatory quotas at any level of the selection process or in any Party affairs, as defined in the bylaws.

C. Fair Representation

1. In elections at all levels of the Party in which Party policy is determined or in which delegates, officers other Party officials, and nominees for public office are to be selected, procedures shall:

   a. Provide full, equal, timely participation;

   b. Assure fair, proportional representation of preference;

   c. Prohibit the unit rule; not require delegates to vote as a majority determines;

   d. Prohibit winner-take-all selections until the highest possible level of selection;

e. Not deny participation for failure to pay a cost, fee or poll tax;

f. Provide whenever possible for direct and not secondary elections.

2. The Democratic Party organization which is closest to the electorate and which encompasses the constituency of a public office shall select the nominees to fill a vacancy in that Party office.

3. Democratic nominees, candidates and delegates shall be selected by Democrats; provided that in furtherance of the Party's goal bringing people and ideas into its affairs, the bylaws of the Party may authorize the participation in the selection of nominees and candidates for public office of voters who do not wish to publicly become members of the party."

D. Majority Rule

1. Majority vote shall prevail in proceedings of this party except when otherwise specified by statute, this Charter, bylaws or rules of order.

2. Majority vote shall permit those in the majority to organize a body, but those in the majority shall respect rights of those in the minority and take care not to exclude them from the organization.

3. Minority reports shall be considered and published whenever they are supported by a substantial minority, as defined by the bylaws or other rules.

E. Accountability

1. Those elected as Democrats have the obligation to support the principles of the Democratic Party.

2. The decisions and votes of a person holding a position of public trust should be a matter of public record.

F. Election and Campaigns

Each state, county and district Democratic Party organization is encouraged to:

1. Conduct candidate campaign workshops which the state central committee will arrange and start in March of every year to instruct candidates on effective campaign procedures and organization; campaigning as Democrats in that organization's jurisdiction'

2. Adopt and publish a code of fair campaign practices to be recommended to all candidates campaigning as Democrats in that organization's jurisdiction;

3. Monitor campaign funding within that organization's jurisdiction;

4. Adopt written guidelines for endorsement of candidates and issues;

5. Take positive, provable steps to ensure that Democratic candidates campaigning within those organizations' jurisdictions endorse Democratic Party objectives as expressed in the platforms of those organizations and in this Charter.

G. Ballot Procedures

1. When individuals vote in public elections, secret ballots shall be used.

2. When a person votes as an elected representative, open ballots shall be used. This provision does not apply to the election by precinct committee officers of organizational officers (e.g. chair, vice-chair, secretary, treasurer, state committeepersons), provided that there is a mechanism to ensure the eligibility of those who cast ballots (e.g. a check-off list, sign-in-sheet, ballot receipts).

3. Proxies may be used in accordance with the National Charter.

Article VIII

General Provisions

A. This Charter is intended to conform to the Charter, By-Laws and Rules of the Democratic Party of the United States. If parts of this Charter are found to be in conflict with the National Charter or other provisions pursuant to the authority of the National Charter, the applicable National provision shall govern. State laws relating to Party operations shall be observed unless in conflict with this Charter or the National Charter or provisions adopted pursuant to the authority of either Charter. In the event of such conflict with state laws, the Democratic Party of the State of Washington shall take provable positive steps to bring such laws into conformity with such Party provisions.

B. The state central committee shall publish and maintain current copies of this Charter and make them available on request.

Article IX

Amendments, Bylaws and Rules

A. Charter Amendments

1. This Charter may be amended by affirmative vote of a majority of all the delegates to the state convention. An amendment must be presented in writing to the state chair by an elected delegated to the state convention at least 30 days before the convention. The state chair shall then publish the full text of the proposed amendment in the call to the state convention or in a mailing sent to all convention delegates no later then ten days prior to the convention.

2. This Charter may also be amended by affirmative vote of two-thirds of the entire membership of the state central committee. An amendment must be proposed in writing by a member of the state central committee and be published in full in the notice of the meeting of the state central committee sent to each member of the committee. An amendment adopted by the state central committee shall be subject to ratification by the next state convention if a written request for ratification is presented in writing to the state chair by an elected delegate to the state convention at least 30 days before the convention.

3. Newly adopted or amended provisions of this Charter shall take effect on the January 1st after they are adopted or ratified by the state convention, except that the adopting resolution may specify that an amendment shall take effect immediately.

B. Bylaws of the Democratic Party of the State of Washington

1. The Democratic Party of the State of Washington shall adopt bylaws to govern its affairs in those matters not fully specified by this Charter. The bylaws should be consistent with and subject to this Charter, the Charter of the Democratic Party of the United States and provisions adopted pursuant to the authority of either Charter.

2. Bylaws may be adopted or amended by affirmative vote of a majority of delegates at the state convention.

3. Bylaws may also be adopted or amended by affirmative vote of a majority of the entire membership of the state central committee.

4. The state central committee shall maintain copies of the current bylaws of the Democratic Party of the State of Washington and shall make them available on request.

C. Rules

1. Each official body of the Democratic Party of the State of Washington shall adopt its own written rules (including bylaws, if applicable) for the conduct of its affairs. These rules shall be consistent with this Charter, the Charter of

the Democratic Party of the United States and provisions adopted pursuant to the authority of either Charter, and the bylaws of the Democratic Party of the State of Washington.

2. Each official body of the Democratic Party of the State of Washington shall maintain copies of its own current rules and make them available on request.

3. The state central committee shall maintain copies of current rules of each official body of the Democratic Party of the State of Washington and make them available upon request.

EXHIBIT B

Passed by the WSDCC Rules Committee on April 2, 2005 for consideration by the WSDCC

Rules for the Selection of Candidates And Nominees for Public Office

I. **Applicability.** These Rules shall apply to the selection of any candidate or nominee for public office who intends to be, or is, associated with the Democratic Party, directly or indirectly, on any ballot used in a publicly financed election or candidate selection process.

II. **Exclusive Means of Selection.** Candidates and nominees for public office must be selected by one of the means specified in these Rules.

III. **Democratic Primary.** Where State law provides for a public primary that complies with these Rules (hereinafter a "Democratic Primary"), candidates and nominees shall be selected by means of that Democratic Primary; provided that in the event of a vacancy on the Democratic ticket, the State Chair may fill the vacancy as specified in State law and applicable Party rules.

IV. **Rules governing Democratic primaries.** A public primary must comply with the following rules in order to qualify as a Democratic Primary where candidates or nominees will be selected by means of the primary:

A. **Separate Democratic ballot required.** All Democratic Primaries occurring on a single date shall appear on the same ballot. The ballot provided to voters in the Democratic Primary may not contain the

names of any candidate for office who is affiliated with any other political party, or of no political party, except that the State may provide to voters a ballot that may be simultaneously used in the Democratic Primaries and in primaries for offices in which no candidate's name is associated with any political party or persuasion, and in such case the ballot may contain the names of all candidates for such offices.

B. **Opportunity to join or confirm membership in the Party must be provided.** Voters participating in the Democratic Primary must be offered the opportunity to publicly affiliate with the Democratic Party but public affiliation with the Party shall not be a requirement of participation in the Democratic Primary unless such public affiliation is required by law.

C. **Affiliates of other political parties forbidden to participate.** As a condition of participating in the Democratic Primary, voters must either publicly affiliate with the Democratic Party or publicly indicate that they are not affiliated with any political party.

D. **Voter participation is public record.** The participation of any voter in the Democratic Primary shall be a public record to the extent necessary to verify that only voters eligible under party rules receive a Democratic ballot and, in addition, the choice

by any voter whether to voluntarily affiliate with the Democratic Party at the Democratic Primary or to declare a lack of affiliation with any political party shall be a public record.

E. **List of Democratic affiliates provided to Party.** The law governing the conduct of the Democratic Primary must provide that election officials shall provide to the Democratic Party no later than the date of certification of the results of the Democratic Primary, a list containing the name of every voter participated in the primary and who voluntarily chose to publicly affiliate with the Democratic Party.

F. A statewide system of voluntary voter registration by party which allows voters to publicly affiliate with the Democratic Party shall satisfy the requirements of subparagraphs B and E, of this paragraph.

V. **Alternative means of selection.** Where State law does not provide for a Democratic Primary that complies with these Rules, candidates and nominees shall be selected in accordance with the following rules, provided that in the event of a vacancy on the Democratic ticket, the State chair may fill the vacancy as provided by State law and other applicable Party rules; and further provided that in 2005 implementation of this Alternative Means of Selection must be affirmatively approved by the Executive Board. The Central Committee specifically intends that the Executive Board may consider issues

including but not limited to litigation, citizen initiatives, and the current state of the law in reaching its decision on implementation.

A. **Authorization required.** No candidate for public office may campaign as a Democratic candidate except as authorized pursuant to this Rule. No candidate for public office may be designated, nor permit him or herself to be designated, as the Democratic nominee for any public office unless such candidate has been designated by the Washington State Democratic Party as a Democratic nominee pursuant to this Rule.

B. In the event a primary process is suspended by a qualifying referendum or otherwise is inconsistent with these rules, and upon an affirmative vote of the Executive Board, party candidates shall be selected by the following process.

1. County Partisan Office Nominees. The nominees for county partisan office shall be chosen at a county nominating convention, or optionally at county council district nominating conventions, consisting of elected and appointed precinct committee officers representing precincts in that county or council district as of the last central committee meeting or executive board meeting held prior to the county nominating convention. Such nominating conventions or caucuses shall be called by the Chair of the Washington State

Democratic Party not later than 14 days prior to the date filing for office commences. The results from each nominating convention shall be reported to the Chair of the Washington State Democratic Party within 24 hours after the convention has adjourned.

2. Legislative Nominees. The nominees for Washington State Senate and Washington State House of Representatives shall be chosen at a legislative district nominating convention consisting of elected and appointed precinct committee officers representing precincts in that legislative district as of the last legislative district meeting held prior to the legislative district nominating convention. Such nominating conventions shall be called by the Chair of the Washington State Democratic Party not later than 14 days prior to the date filing for office commences. The results from each nominating convention shall be reported to the Chair of the Washington State Democratic Party within 24 hours after the convention has adjourned.

3. Congressional Nominees. The nominees for United States Congress shall be chosen through nominating conventions of elected and appointed precinct committee officers representing precincts in that Congressional District

as of the last legislative district meeting or county central committee meeting held prior to the Congressional District nominating convention. Such nominating conventions shall be called by the Chair of the Washington State Democratic Party not later than 14 days prior to the date filing for office commences. The results from each nominating convention shall be reported to the Chair of the Washington State Democratic Party within 24 hours after the convention has adjourned.

4. Statewide Nominees. The nominees for all statewide partisan elected offices (US Senator, Governor, Lt. Governor, Secretary of State, Treasurer, Auditor, Attorney General, Insurance Commissioner, and Public Lands Commissioner) shall be selected at the Democratic State Convention. Such nominating conventions shall be called by the Chair of the Washington State Democratic Party not later than 14 days prior to the date filing for office commences. The results from each nominating convention shall be reported to the Chair of the Washington State Democratic Party within 24 hours after the convention has adjourned.

5. The procedures set forth in subparagraphs 3 and 4 may be delegated in whole or in part by a vote of those entitled to vote to the

Washington State Democratic Central Committee.

6. Rules for Balloting. Each candidate or the candidate's representative shall be entitled to address the convention for not less than two minutes, or longer if provided for under rules adopted to govern the convention. Each delegate shall vote by ballot for no more than one candidate for each office for which nominations are sought. The results shall be tallied and reported to the chairman of the convention. The convention may dispense with balloting and nominate by acclamation for any office in which a single candidate is seeking nomination.

C. Vacancy on ticket. A vacancy caused by the death or disqualification of nominee of the Democratic Party may be filled at any time up to and including the day prior to the election for that position. For state partisan offices in any political subdivision voted on solely by electors of a single county, an individual shall be appointed to fill such vacancy by the relevant Democratic County Central Committee. For all other partisan offices, including federal or statewide offices, an individual shall be appointed to fill such vacancy by the Washington State Democratic Central Committee. The authority granted under this section may be delegated by the County or State Democratic Central Committee to its Executive Board or Chair.

1. Weighted Voting. The number of votes at each nominating convention other than the state convention shall be equal to the sum of the number of precinct level delegates that were allocated to the precincts that are represented at the convention during the most recent National Delegate Selection process. Each elected or appointed PCO voting at the caucus or convention shall be apportioned the number of votes equal to the number of precinct level delegates his or her precinct was allotted during the most recent National Delegate Selection process. In the case of newly formulated precincts the calculation would be based on the allocation formula used in the most recent delegate selection plan.

2. Majority Vote Required. The candidate of the Democratic Party shall be the candidate who receives a majority vote of weighted ballots. If no candidate receives a majority of the first ballot, the candidate receiving the least number of votes shall be dropped from each successive ballot until a candidate receives a majority. In the event of a tie in determining which candidate shall be dropped, the candidate shall be chosen by lot.

3. Nominations in Cases Where No Convention Action Occurs. In any case where the appropriate convention has

failed to designate a nominee, the nominee will be designated by Democratic State Central Committee acting through its Chair.

4. These rules are mandatory and are not amendable by any party organization other than the Washington State Democratic Central Committee or the State Convention.

5. State Chair to Notify Election of Officials. To the extent required by law or appropriate, the State Chair shall submit to state and local election officials the names of those candidates authorized to campaign as Democratic candidates and those candidates designated as Democratic nominees.

VI. **Threshold demonstration of Party support required.** Any registered voter in the State of Washington is eligible for selection as a candidate or nominee of the Democratic Party for any public office provided:

A. The voter must publicly attest his or her support of the Democratic Party and his or her desire to be publicly known as a Democrat; and

B. The voter must be otherwise eligible under state law for election to the office sought; and

C. The voter must not have been registered as a member of any political party other than the Democratic Party for at least one (1) year immediately preceding filing for office; and

D. Beginning January 1, 2005 the voter must have either (1) received a vote of approval of 25% of those present and voting at a meeting of the Democratic Party organization under the charter for the jurisdiction represented by the office sought or (2) at the time of filing the declaration of candidacy required by law submitted a nominating petition signed by at least 5% of those voters who at the time of signing are voters in the jurisdiction and registered with the Democratic Party or (3) at the time of filing the declaration of candidacy required by law submitted a nominating petition signed by at least 25% of the elected and appointed Democratic Precinct Committee Officers representing precincts within the jurisdiction represented by the office sought and who held such office as of the last meeting of the Democratic party organization for the jurisdiction.

VII. **Decision of Executive Board Final.** The decision of the executive board with respect to any question of interpretation of these rules is final.

VIII. All nominating conventions held under this rule shall submit their results to the state party no later than July 12, 2005.

THE HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF WASHINGTON AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, v. DEAN LOGAN, et al., Defendants, WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al., Interveners, LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Interveners, STATE OF WASHINGTON, et al., Interveners, WASHINGTON STATE GRANGE, et al., Interveners.	Case No: CV05-0927-TSZ LIBERTARIAN PARTY'S MOTION FOR SUMMARY JUDGMENT NOTE FOR MOTION CALENDAR WEDNESDAY, JULY 13, 2005 AT 9:00 AM ORAL ARGUMENT REQUESTED

SUMMARY OF MOTION

The Libertarian Party of Washington State ("the LP") seeks an order of Summary Judgment declaring Initiative 872, passed by Washington voters in 2004, is unconstitutional on its face, and an

injunction preventing the several government defendants from implementing the initiative. The LP also requests an order preventing the defendants from identifying on any primary ballot a "Libertarian" candidate who has not been authorized to carry the Libertarian label under the rules of the LP. The LP reserves to a later date its claim that the initiative is unconstitutional as applied to the LP and its adherents.

In this motion the LP will show the primary system established under Initiative 872 violates basic First Amendment principles, primarily because I-872 allows candidates to use party labels to inform voters of their ideology while denying the political party the ability to define what the party label means. In addition, I-872 places impermissible limits on access to the general election ballot contrary to the Article 1 and the Fourteenth Amendment of the U.S. Constitution. Accordingly, it is unconstitutional on its face.

STATEMENT OF FACTS

On September 13, 2003, the Ninth Circuit Court of Appeals declared Washington's 68 year old "blanket primary[1]" unconstitutional as a violation of the political parties' First Amendment rights. *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (C.A.9 2003). On January 8, 2004, Intervenor-Defendant Washington State Grange filed Initiative 872 with the Secretary of State for

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[1] The so-called "blanket primary" was adopted by the state legislature in 1935, pursuant to an earlier initiative of Intevenor-Defendant Washington State Grange.

Washington,[2] which initiative proposed a so-called "modified blanket primary"[3] system similar to but nonetheless unlike one used in the State of Louisiana,[4] and which was expressly intended to "look nearly identical to the blanket primary system."[5]

According to Section 2 of the initiative, the stated legislative intent was to:

> Protect each voter's right to vote for any candidate for any office...[by] "allowing each voter to keep party identification, if any, secret; allowing the broadest possible participation in the primary election: and giving each voter a free choice among all candidates in the primary." Heavey v. Chapman, 93 Wn.2d 700, 705, 611 P.2d 1256 (1980)...In the event of a final court

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[2] See, http://www.secstate.wa.gov/elections/initiatives/signatures.aspx?y=2004.

[3] The primary system introduced by I-872 has alternately been called the "modified blanket primary," the "qualifying" primary," the "Cajun" primary or the "top two" primary.

[4] The main distinction between the "modified blanket primary" introduced by I-872 and the Louisiana system is that Washington has a primary in September followed a general election in November, while Louisiana has a general election in November followed by a run-off in December. This distinction has constitutional significance, as will be explained in Part 5 of this memorandum.

[5] See, Exhibit 2, page 1, Declaration of John J. White Jr. in Support of Plaintiff's Motion for Preliminary Injunction, Clerk's Document # 8 (CD 8).

> judgment invalidating the blanket primary, this People's Choice Initiative will become effective to implement a system that best protects the rights of voters to make such choices, increases voter participation, and advances compelling interests of the state of Washington.

Initiative 872, § 2.

Section 18 of the initiative specifically provided:

> This act takes effect only if the Ninth Circuit Court of Appeals' decision in Democratic Party of Washington State v. Reed, 343 F.3d 1198 (9th Cir. 2003) holding the blanket primary election system in Washington state invalid becomes final and a Final Judgment is entered to that effect.

Initiative 872, § 18.

On Feb. 23, 2004, the United States Supreme Court denied the state's petition for review of the Ninth Circuit Decision. *Reed v. Democratic Party of Washington*, 540 U.S. 1213 (2004).

Later the Washington State Legislature passed, and on April 1, 2004 Governor Locke approved, an open primary system (commonly known as the "Montana" primary system) wherein voters first selected a party ballot and then voted for

candidates on the selected party ballot.[6] Engrossed Senate Bill 6453, Chapter 271, Laws of 2004, included provisions for both a "modified blanket" primary system similar to I-872 and a "Montana" or "open" primary system. The former primary system was described in the bill as a "qualifying" primary, while the latter system was described as a "nominating" primary. Recognizing that substantial doubt existed regarding the constitutionality of the "qualifying" primary system, Section 101 of the bill provided:

> If a court of competent jurisdiction holds that a candidate may not identify a major or minor political party as best approximating his or her political philosophy, as provided in RCW 29A.24.030(3), and all appeals of that court order have been exhausted or waived, the secretary of state shall notify the governor, the majority and minority leaders of the two largest caucuses in the senate and the house of representatives, the code reviser, and all county auditors that the state can no longer conduct a qualifying primary and instead will conduct a nominating primary.

However, the governor vetoed the "qualifying" primary portions of the bill, leaving only the

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[6] See, Declaration of Richard Shepard in Support of Summary Judgment, ¶ 2, and Exhibit A thereto.

"nominating" primary system in place.[7] The Washington State Supreme Court upheld the governor's veto against a constitutional challenge by Intervenor-Defendants Washington State Grange on January 20, 2005. *Washington State Grange v. Locke*, 153 Wash.2d 475, 105 P.3d 9 (2005).

On November 2, 2004, voters approved I-872.[8] In addition to the Sections identified above, Section 3 declared that Washington voters had the rights, inter alia, to "cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate."

Section 4 of the initiative re-defined "partisan office" as

> "a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name."

Section 5 of the initiative amended R.C.W. § 29A.04.127 to re-define "primary" or "primary election" as:

> a procedure for winnowing candidates for public office to a final list of two as part of a special or general election. Each voter has the right to cast a vote

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[7] See, veto message, Dec. of Richard Shepard, Exhibit A, at pages 63-66.

[8] See, http://vote.wa.gov/general/measures.aspx?a=872.

> for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate.

Section 6 amended RCW 29A.36.170, to limit access to the general election ballot:

> For any office for which a primary was held, only the names of the top two candidates will appear on the general election ballot;...

Section 7(3) of the initiative provided:

> For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots by appropriate abbreviation as set forth in rules of the secretary of state. A candidate may express no party or independent preference. Any party or independent preferences are shown for the information of voters only and may in no way limit the options available to voters.

Section 11 of the initiative stated:

> The voters' pamphlet must also contain the political party preference or independent status where a candidate appearing on the ballot has expressed such a preference on his or her declaration of candidacy.

Section 17 of the initiative purported to repeal several statutes regarding elections but failed to repeal R.C.W. §§29A.20.110 through 29A.20.201, all relating to minor party nominating conventions.

Thus the stage was set for additional litigation over the right of all political parties to select their own standard bearers as well as the right of the LP to access the general election ballot.

ARGUMENT

STANDARD OF PROOF

A party is entitled to judgment prior to trial if the pleadings and evidence "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

STIPULATED ISSUES FOR ARGUMENT

1. Does the primary system established by Initiative 872 nominate political party candidates for public office?

Short Answer: Yes.

> "The nature of the nominating procedure determines the nature of the party; he who can make the nomination is owner of the party."[9]

"Nominate" according to Black's Law Dictionary (5th Ed.), means: "To name, designate by name, appoint or propose for election or appointment." Initiative 872 does nothing other than "name, designate by name, appoint or propose for

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[9] E.E. Schattschneider, *Party Government* 64 (1942).

election or appointment," candidates for partisan public office. Neither does I-872 implement a "*nonpartisan* blanket primary" discussed in *California Democratic Party v. Jones*, 530 U.S. 567, 585, 120 S.Ct. 2402 (U.S.Cal.,2000). See, e.g., I-872, § 4. The significant dispute appears to be who does the nominating.

Even if the persons thus nominated under I-872 are not "political party candidates," "that is the problem with the system, not a defense of it." *Reed*, 343 F.3d at 1204. In *Reed* the State argued, because it has no voter registration regime and

> "because of its non-partisan registration, the winners of the primary 'are the 'nominees' not of the parties but of the electorate.' Thus, the State argues, its primary is a '*nonpartisan* blanket primary' that under *Jones* does not violate the parties' associational rights."

Reed, 343 F.3d at 1203 (emphasis in original, footnotes omitted).

The Ninth Circuit dismissed the State's argument:

> "These are distinctions without a difference. That the voters do not reveal their party preferences at a government registration desk does not mean that they do not have them. The Washington scheme denies party adherents the opportunity to nominate their party's candidate free of the risk of

> being swamped by voters whose preference is for the other party."
>
> "Also, those who actively participate in partisan activities, including activities such as holding precinct caucuses in their homes, serving on local and state party committees, contributing money to their parties, canvassing, and watching polls for their parties, have a First Amendment right to further their party's program for what they see as good governance. Their right to freely associate for this purpose is thwarted because the Washington statutory scheme prevents those voters who share their affiliation from selecting their party's nominees."

Reed, 343 F.3d at 1203-1204.

Thus, not only did the Ninth Circuit reject the State's argument that the electorate "nominated" candidates without consideration of political affiliations, it embraced the proposition that the First Amendment rights of political party adherents reached well beyond the context of picnics to include the context of primaries.

Section 7(3) of I-872 expressly provides for candidates to indicate a political party "preference" when filing a declaration of candidacy and will be shown on ballots "for the information of voters." Section 11 expressly provides that the candidate's party "preference" will be included in the state voter's pamphlet.

The defendants here have not demonstrated and cannot demonstrate any constitutionally significant difference between the party "designation"[10] made by candidates in the blanket primary and invalidated by *Reed* and a party "preference" in what they have themselves called the "modified blanket primary." The claimed "right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate," stated in both § 3 & 5 of the initiative, if it is a right at all, is "overborne by the countervailing and legitimate right of the party to determine its own membership qualifications." *Jones, supra,* 530 U.S. at 583. The "rights" claimed in Sections 3 & 5 of I-872 are precisely what the Ninth Circuit held to be a clear violation of the rights of the political parties and their adherents.

> The right of people adhering to a political party to freely associate is not limited to getting together for cocktails and canapes. Party adherents are entitled to associate to choose their party's nominees for public office.

Reed, 343 F.3d at 1204

Not only does I-872 infringe on political party rights, it fosters chaotic and disorderly elections, to the detriment of both political parties and voters.

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[10] See, R.C.W. § 29.15.010(3) Declaration and affidavit of candidacy. Recodified as RCW 29A.24.030 pursuant to 2003 c 111 § 2401, effective July 1, 2004. The full text of now superceded R.C.W. § 29.15.010 is at Declaration of Richard Shepard, Exhibit B.

The "general policy is to have contending forces within the party employ the primary campaign and primary election to finally settle their differences." *Storer v. Brown*, 415 U.S. 724, 735, 94 S.Ct. 1274 (1974). While "states may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and campaign-related disorder...." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364 (1997), the primary system established by Initiative 872 prevents the parties from settling their differences internally and actually encourages party splintering and unrestrained factionalism, see, *Storer* 415 U.S. at 735, ("splintered parties and unrestrained factionalism may do significant damage to the fabric of government"), and see, Federalist # 10 (Madison).

Further, by allowing any person to declare a "preference" for a political party while also depriving the political party any right to approve or otherwise determine whether the candidate actually agrees with or subscribes to the principles of the party the State fosters voter confusion regarding what the party label actually means. This state has claimed, and the Supreme Court has agreed, reduced voter confusion was a compelling state interest that justified limiting minor party and independent candidate's access to the general election ballot, *Munro v. Socialist Worker's Party*, 479 U.S. 189 (1986).

By adopting I-872 the state has abandoned that claim, now allowing all candidates to express a "preference" for both major and minor political parties, without any requirement that the candidate

demonstrate any support within the "preferred" party or even among the general public to have immediate access to the primary ballot. The logical result is a cacophony of undisciplined voices on an overcrowded primary ballot, all of which will confuse voters about the LP's message.

2. **If the primary system under Initiative 872 does not nominate political party candidates for public office, does each political party have the right to select for itself the only candidate who will be associated with it on either a primary or general election ballot?**

Short Answer: Yes. To clarify, the Libertarian Party maintains it has the right to select its own standard bearers for appearance on the general election ballot regardless whether the I-872 primary system "nominates political party candidates."

> "In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views."

Jones, 120 S.Ct. at 2408.

The Supreme Court has "continually stressed that when States regulate parties' internal processes they must act within limits imposed by the Constitution." *Jones,* 120 S.Ct. at 2407, (citing *Eu v. San Francisco Democratic Comm.*, 489 U.S. 214 (1989), and *Democratic Party Of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, (1981)) (footnote omitted). In *Tashjian, v. Republican Party Of Connecticut,* 479 U.S. 208 (1986), and again in *Eu, supra,* the Supreme Court said "[A] State may enact laws to 'prevent the disruption of the political parties from without' but not, as in this case, laws 'to prevent the parties from taking internal steps affecting their own process for the selection of candidates.'" *Id.*, at 227 (quoting *Tashjian*, at 224).

"Since control over participation in a primary can profoundly influence the content of the compromise emerging from the primary election, a political party's ability to define its boundaries cannot be separated from the party's ability to determine its political ideology."[11] "On several occasions this [Supreme] Court has recognized that the inclusion of persons unaffiliated with a political party may seriously distort its collective decisions - thus imparting the party's essential functions - and that political parties may accordingly protect themselves 'from intrusion by those with adverse political principles.'" *La Follette*, 450 U.S. at 122 (1981); (citing to *Ray v. Blair*, 343 U.S. 214, 221–222

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[11] Berdon, J. *The Constitutional Right of the Political Party to Chart its Own Course: Defining Its Membership Without State Interference*, 22 Suffolk U.L.R. 933, 965 (quoting Note, *Primary Elections and the Collective Right of Freedom of Association*, 94 Yale L.J. 117, 126 (1984)).

(1952); *Rosario v. Rockefeller*, 410 U.S. 752 (1973); and *Kusper v. Pontikes*, 414 U.S. 51, 59-60 (1973).

Historically (except for the 2002 and 2004 elections) the LP has nominated its candidates by convention as provided by prior state law. In *Reed*, while the State was attempting to explain why the blanket primary system treated minor political party candidates differently from major political party candidates it conceded "[a]llowing multiple filings by minor party candidates would further disburse the strength of small parties and would increase the possibility that if none of them gains one percent of the primary vote, no representative of that party would qualify for the general election ballot." *Brief of Appellee State of Washington*, Democratic Party of Washington v Reed (02-35428), at 47.

It then asserted, "it is virtually certain that an affiliate of each major party will advance to the general election; there is no need to 'help' large parties by allowing them to unite behind a single slate of candidates." *Id.* Implicit in that assumption of virtual certainty is the fact that Democratic and Republican Party candidates show historically strong ballot strength, and emerging political parties such as the LP have significantly lesser strength. A survey of recent statewide elections supports this fact.[12]

However, directly contrary to his argument in *Reed*, on May 18, 2005, the Secretary of State adopted emergency rules allegedly to implement

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[12] See, Declaration of Richard Shepard, at ¶ 4, and Exhibit C.

I-872 that effectively preempted and eliminated existing statutory mechanisms (R.C.W. §§ 29A.20.110 through 29A.20.201) for the LP to exercise its right to nominate its candidates by convention.[13]

First, the Secretary does not have the authority under Washington law to repeal a statute. The legislature may not delegate to the executive authority the power to make law. *Morgan v. Department of Social Sec.*, 14 Wash.2d 156, 175, 127 P.2d 686 (1942). An administrative agency may not, by means of an interpretation or clarifying regulation, actually modify or amend the legislative enactment. *Hansen Baking Co. v. City of Seattle*, 48 Wash.2d 737, 742, 296 P.2d 670 (1956); *Fisher Flouring Mills Co. v. State*, 35 Wash.2d 482, 492, 213 P.2d 938 (1950).

Second, the Secretary is judicially estopped from taking a position inconsistent with the position he took in *Reed*. *Rissetto v. Plumbers and Steamfitters Local 343*, 94 F.3d 597, 600 (C.A.9 1996). I-872 does not change the status of minor political parties. They are still small and still at risk of disbursed or diluted ballot strength in connection with unwanted or unapproved candidacies. The fact that I-872 removed the so-called "one-percent rule," see, *Munro v. Socialist Workers Party*, 479 U.S. 189, 107 S.Ct. 533, 93 L.Ed.2d 499, (1986), which rule was referenced the State's argument, if relevant at all, exacerbates the ballot access burden on the Libertarian Party. See, Part 5, infra.

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[13] See, Declaration of Richard Shepard, at ¶ 5, and Exhibit D.

The Libertarian Party has the right to nominate its own candidates to the general election ballot under existing statutes and under the First and Fourteenth Amendment. Under Secretary of State's interpretation of I-872 the State deprives the LP of its First Amendment right of expressive association as well as its Fourteenth Amendment right of due process.

3. If the primary system under Initiative 872 nominates political party candidates for public office, does Initiative 872 violate the First Amendment by compelling a political party to associate with unaffiliated voters and members of other political parties in the selection of its nominees?

Short Answer: Yes.

> "There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together."

Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984)(citation omitted).

This issue was also settled in *Reed*. There the defendants argued since the Democratic and

Republican Parties had no legal or organizational basis for determining party membership, they could not demonstrate a constitutional burden on their members, meanwhile ignoring that the Libertarian Party had an organizational basis for determining party membership, a "non-aggression" pledge.[14] The *Reed* court disposed of the defendants' argument by observing, "That the voters do not reveal their party preferences at a government registration desk does not mean that they do not have them." *Reed, supra.*

More important, the dispositive issue is not who makes up the membership of the political parties, but whether the State can force the parties to accept the I-872 definition of political party membership, which reduced to its essence is no definition at all. The State argued to the Ninth Circuit in *Reed* that political party membership "plays no role" in its election system. See, generally *Brief of Appellee State of Washington*, Democratic Party of Washington v Reed (02-35428), at 41-44. The Grange argued the only valid definition for party membership is voter registration, which the State (and/or the citizens) have refused to enact for over 80 years. *Brief of Appellee Washington State Grange*, Democratic Party of Washington v Reed (02-35428), at 31.

The core issue in *Reed* was thus apparent. The State had co-opted political party labels and

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[14] See, Declaration of Richard Shepard, ¶ 6, and Exhibit E thereto.

prestige into its primary election system, and at the same time deprived the political parties of the means to identify their members upon a legal basis (voter registration) and prevented them from identifying their members on an organizational basis (party rule). The *Reed* court essentially held the deprivation of both legal and organizational bases for membership was a severe constitutional burden on its face. As each relates to identification of party membership, there is no meaningful distinction between the old blanket primary and the "modified blanket primary," and I-872 is just as unconstitutional on this ground as was the old blanket primary.

4. **Does Washington's filing statute impose forced association of political parties with candidates in violation of the parties' First Amendment associational rights?**

Short Answer: Yes.

> "[A] single election in which the party nominee is selected by nonparty members could be enough to destroy the party. ... Ordinarily, however, being saddled with an unwanted, and possibly antithetical, nominee would not destroy the party but severely transform it. '[R]egulating the identity of the parties' leaders,' we have said, 'may ... color the

> parties' message and interfere with the parties' decisions as to the best means to promote that message.'"

Jones, at 2410-2411, (citing *Eu*, 489 U. S., at 231, n. 21).

In addition to the burden of depriving the political parties of any meaningful way to define their membership for the purpose of nominating candidates, I-872 also purports to deprive the parties of their right to require candidates to comply with internal party rules in seeking the nomination in the name of the party.

As part of its internal rules the Libertarian Party requires all candidates who wish to represent the Libertarian Party must be members of the Libertarian Party. One becomes a member of the Libertarian Party by subscribing to or affirming a non-aggression pledge.[15] In addition, the name "Libertarian Party" is a registered trademark, and accordingly the LP has a proprietary right to determine who may use the name and for what purposes the name may be used.[16]

Federal courts have consistently held political parties have the right to insist on loyalty to party principles, *Nader v. Schafer*, 417 F.Supp. 837, 847 (D.Conn. 1976), summarily aff'd 429 U.S. 989 (1976), the right to require a loyalty pledge, *Ray v. Blair*,

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[15] See, Declaration of Richard Shepard, ¶ 6, and Exhibit E thereto

[16] See, Declaration of Richard Shepard, ¶ 7, and Exhibit F thereto.

343 U.S. 214, 231 (1952),[17] and the right to impose tests on candidates. *Duke v Smith* 13 F.2d 388, 391 n.3 (11th Cir. 1994). "Protection of the association's right to define its membership derives from the recognition that the formation of an expressive association is the creation of a voice, and the selection of members is the definition of that voice." *Roberts*, 468 U.S. at 633 (O'Connor, J., concurring in part and concurring in the judgment).

I-872 deprives the LP of its ability to enforce its requirement that candidates of the party be members of the party as well as its ability to regulate the use of the Libertarian Party name by non-members. Accordingly it forces the LP to associate with candidates who may not agree with, and who in some cases may actively oppose, the principles and message of the LP.

5. Does Initiative 872's limitation of access to the general election ballot to only the top two vote-getters in the primary for partisan office unconstitutionally limit ballot access for minor political parties?

Short Answer: Yes

> "The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the

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[17] *Reed* sets forth the basic constitutional rationale for the Libertarian Party's right to require its candidates to execute its "non-aggression" pledge, but *Blair* is directly on point and dispositive.

> right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot."

Williams v. Rhodes, 393 U.S. 23, 31, 89 S.Ct. 5 (1968).

Under I-872, instead of having a relatively modest and easily calculable threshold for access to the general election ballot, such as the so-called "one-percent rule," see, *Munro, supra*, Libertarian Party candidates now face a ballot access threshold that is a moving target, which target is dependant on factors wholly outside the control of the Libertarian Party.

In a three candidate race for a partisan office the Libertarian Party candidate could need to garner more than 33% of the vote to advance to the general election. In a multiple candidate race the corresponding vote requirement would vary significantly, depending on the level of support for other candidates, the political and statistical variables increasing exponentially with the addition of each new candidate. From a historical point of view the second place candidate in a statewide primary in Washington has typically obtained between 21% and 41% of the total vote. Third place candidates, often Democratic or Republican Party candidates, typically range between 4% and 21% of the total vote.[18] Without reasonable certainty under a "top two go forward" scheme how many candidates

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[18] See, Declaration of Richard Shepard, ¶ 4, and Exhibit C thereto.

will declare their candidacy or what portion of the vote a candidate must win to reach the general election ballot, the incentive for the Libertarian Party to place anyone on the ballot is dramatically reduced.

The void-for-vagueness doctrine is applicable to laws regulating conduct protected by the First Amendment. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). "[A] law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law." *Baggett v. Bullitt*, 377 U.S. 360, 367, 84 S.Ct. 1316 (1964)(citations omitted). A statute is unconstitutionally vague if it does not give "a person of ordinary intelligence fair notice" of the statute's requirements. *United States v Harriss*, 347 U.S. 612, 617 (1954).

> As we said in *Smith v. People of State of California*, '* * * stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser.' 361 U.S. 147, at 151, 80 S.Ct. 215, 217, 4 L.Ed.2d 205. 'The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of

> the Republic, is a fundamental principle of our constitutional system.

Cramp v. Board of Public Instruction of Orange County, Fla., 368 U.S. 278, 287-288, 82 S.Ct. 275 (1961)

A vague statute is not reasonably necessary to achieve a State's interest in regulating ballot access. *Duke v. Connell*, 790 F. Supp. 50, 53-54 (DRI 1992). "Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike,..." *Jenness v. Fortson*, 403 U.S. 431, 442 (1971).

The Libertarian Party is a "small" party without the "strength" of the older parties, so there is no "certainty" how many, if any, of its candidates (and hence its First Amendment protected message) will reach the general election ballot. By presenting the LP with a moving target for access to the general election ballot, I-872 is unconstitutionally vague.

In addition to the "moving target" ballot access problem, I-872 also imposes an impermissible numerical barrier upon the Libertarian Party for access to the general election ballot. For the offices of U.S. Senator and Governor, for example, no other state in the nation but Washington requires voter support of more than 2.05% of the electorate for access to the general election ballot.[19] As can be seen from the historical survey, in order to move to the general election ballot in a top-two system a third party candidate is going to have to beat Democratic

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[19] See, Declaration of Richard Shepard, at ¶ 8, and Exhibit G thereto.

and Republican Party candidates who nearly always obtain 21% or more of the total vote.

The United States Constitution, Art. I, § 4, cl. 1, authorizes Congress to pre-empt state law regarding the time, place and manner of elections. Under that power Congress determined that Representatives, Senators and Presidential electors should all be elected on the second Tuesday of the November in each affected year, 2 U.S.C. §§ 1, 7; 3 U.S.C. § 1, provided, in the event no candidate obtains a majority or other "failure to elect" a state may hold a runoff. 2 U.S.C.A. § 8; *Foster v. Love*, 522 U.S. 67, 71-72, 118 S.Ct. 464, n. 3 (1997).

Aside from thus authorizing runoffs, Congress has not directly legislated "time, place and manner" regulations that purport to "winnow" the field of candidates who may appear on the general election ballot. However,

> "For more than two decades, this Court has recognized the constitutional right of citizens to create and develop new political parties. The right derives from the First and Fourteenth Amendments and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences. See *Anderson v. Celebrezze*, 460 U.S. 780, 793-794, 75 L. Ed. 2d 547, 103 S. Ct. 1564 (1983); *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 59 L. Ed. 2d 230, 99 S.

> Ct. 983 (1979); *Williams v. Rhodes*, 393 U.S. 23, 30-31, 21 L. Ed. 2d 24, 89 S. Ct. 5 (1968). To the degree that a State would thwart this interest by limiting the access of new parties to the ballot, we have called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation, see *Anderson*, supra, at 789, and we have accordingly required any severe restriction to be narrowly drawn to advance a state interest of compelling importance. See *Socialist Workers Party*, supra, at 184, 186."

Norman v Reed, 502 U.S. 279 288-289 (U.S., 1992)

Despite this rich history of ballot access litigation Congress has not seen fit to disturb the general election ballot access jurisprudence of the Supreme Court. While the right of a minor party or independent candidate to access to the general election ballot is not absolute, e.g., *Munro, supra*, none of the ballot access cases suggests that a candidate showing a "modicum of support," *Jenness*, 403 U.S. at 442, may be excluded from the general election ballot.

In *Rhodes, supra,* the court invalidated an Ohio signature requirement of 15% of the electorate for minor party ballot access. *Jenness* approved a Georgia requirement that a candidate must file a nominating petition signed by at least 5% of the number of registered voters at the last general election for the office in question, and intimated that

a requirement substantially higher than 5% would be constitutionally suspect. 415 U.S., at 739, n 10.

In a later case the Supreme Court summarily affirmed a judgment of the eastern district of Arkansas that invalidated a 10% signature requirement. *Jernigan v. Lendall*, 433 U.S. 901, 97 S.Ct. 2963 (1977). While *Lendell* was a summary decision, Justice Stewart, who wrote the majority opinion in *Jenness*, voted to affirm because the 10% requirement, coupled with an early filing deadline, was "unreasonably burdensome" upon Mr. Lendell.[20] Lest the defendants argue that signature requirements for ballot access are qualitatively different from primary vote percentages, the *Munro* court was "unpersuaded, ..., that the differences between the two mechanisms are of constitutional dimension" 479 U.S. at 197.

States do not have the power to adopt their own qualifications for congressional service and the power to add qualifications for the offices of congressman and senator is not part of the original powers of sovereignty which the Tenth Amendment reserved to the states. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S.Ct. 1842 (1995). I-872 enacted an election system that imposes unconstitutional numerical qualifications on federal candidates by limiting the number of general election candidates to two and by requiring candidates to show more than a "modicum of support" to appear on the general election ballot.

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[20] See, Declaration of Richard Shepard, ¶ 9, and Exhibit H thereto.

CONCLUSION

For the foregoing reasons, this court should declare I-872 unconstitutional in its entirety, that the state has demonstrated on interest sufficiently weighty or narrowly tailored to justify the burden on the Libertarian Party, all in violation of 42 U.S.C. § 1983 et seq., and enter an order prohibiting the government defendants from implementing it.

DATED Friday, June 17, 2005, at Tacoma, Washington.

SHEPARD LAW OFFICE, INC.,

Richard Shepard

RICHARD SHEPARD, WSBA # 16194
Attorney for Proposed Intervenors
LIBERTARIAN PARTY OF
WASHINGTON STATE, RUTH
BENNETT, and J. S. MILLS

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(19)

Supreme Court, U.S.
FILED
MAY 23 2007
OFFICE OF THE CLERK

NOS. 06-730, 06-713

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE GRANGE,

Petitioner,

v.

WASHINGTON STATE REPUBLICAN PARTY, ET AL.,

Respondents.

STATE OF WASHINGTON; ROB MCKENNA, ATTORNEY GENERAL; SAM REED, SECRETARY OF STATE,

Petitioners,

v.

WASHINGTON STATE REPUBLICAN PARTY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX VOLUME II OF III

ROBERT M. MCKENNA
Attorney General
James K. Pharris*
Deputy Solicitor General
**Counsel of Record*

1125 Washington Street SE
Olympia, WA 98504-0100
360-664-3027

Petition For Writ Of Certiorari Filed Nov. 20, 2006
Certiorari Granted Feb. 26, 2007

Thomas Ahearne
Foster Pepper & Shefelman PLLC
1111 3rd Avenue Suite 3400
Seattle, WA 98101-3299
(206) 447-4400
Counsel for Petitioner Washington State Grange

John White*
Kevin Hansen
Livengood Fitzgerald & Alskog
121 3rd Avenue
Kirkland, WA 98083-0908
(425) 822-9281
Counsel for Respondent Washington State
Republican Party
**Counsel of Record*

David McDonald*
Jay Carlson
Alex Wagner
Kirkpatrick & Lockhart Preston Gates Ellis LLP
925 4th Avenue Suite 2900
Seattle, WA 98104-1158
(206) 623-7580
Counsel for Respondent Washington State
Democratic Central Committee
**Counsel of Record*

Richard Shepard
Shepard Law Office PLLC
818 S Yakima Avenue Suite 200
Tacoma, WA 98405-4865
(253) 383-2235
Counsel for Respondent Libertarian Party

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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition For Certiorari of the Washington State Grange, Docket No. 06-710:

Washington State Republican Party v. Washington,
460 F.3d 1108 (9th Cir. 2006) 1a

Washington State Republican Party v. Logan
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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition For Certiorari of the State of Washington, Docket No. 06-713:

Washington State Republican Party v. Washington,
460 F.3d 1108 (9th Cir. 2006) 1a

Washington State Republican Party v. Logan
377 F. Supp. 2d 907 (W.D. Wash. 2005) 35a

Permanent Injunction (7-29-05)..... 93a

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

(No. 05-35774) (Appeal of Washington State Grange)

(No. 05-35780) (Appeal of State of Washington)

(NOTE: The dockets for these two appeals are identical except where noted below)

August 4, 2005 Docketed Cause and Entered Appearances of Counsel

August 4, 2005 Civil Appeals Docketing Statement

August 5, 2005 Case rejected from Circuit Mediation Program

August 9, 2005 Appellant's Notice of Designation of Reporter's Transcript

August 11, 2005 Appellees' Response to Motion to Expedite Review (No. 05-35774 only)

August 11, 2005 Appellants' Notice of Designation of Reporter's Transcript (entire transcript ordered)

August 12, 2005 Appellee State Republican Party's Joinder of Opposition to Motion to Expedite Review (No. 05-35774 only)

August 17, 2005 Appellant Washington State Grange's Reply to Response Supporting Motion to Expedite Appeal (No. 05-35774 only)

August 17, 2005 Appellees' Response Opposing Motion to Expedite Review (No. 05-35774 only)

August 18, 2005 Appellants' Joint Reply Supporting Motion to Expedite Review

August 19, 2005 Order Granting in Part and Denying in Part Motion to Expedite Review

August 25, 2005 Appellee Democratic Central Committee's Motion to Extend Time to File Brief

August 31, 2005 Order Granting Democratic Central Committee's Motion to Extend Time

September 19, 2005 Appellant Washington State Grange Opening Brief filed (No. 05-35774)

September 19, 2005 Appellant State of Washington's Opening Brief filed (No. 05-37580)

October 18, 2005 Appellee Washington State Republican Party Brief filed (No. 05-37580)

October 19, 2005 Appellee Washington State Republican Party Brief filed (No. 05-37574)

October 19, 2005 Appellee Libertarian Party of Washington Brief filed

October 26, 2005 Appellee State Democratic Central Committee Brief filed

October 26, 2005 Amicus FairVote's Motion and Brief filed

October 31, 2005 Appellant Washington State Grange's Response Opposing FairVote's Motion for Amicus Status (No. 05-37574)

October 31, 2005 Appellant State of Washington's Response Opposing FairVote's Motion for Amicus Status

October 31, 2005 Appellee Washington State Republican Party's Response Opposing FairVote's Motion for Amicus Status

November 1, 2005 Appellee Washington State Democratic Committee's Joinder in Appellee Republican Party's Response Opposing FairVote's Motion for Amicus Status

November 7, 2005 FairVote's Reply to Responses

November 8, 2005 Order Consolidating Appeals of Washington State Grange and State of Washington, Granting Appellee Washington State Democratic Party's Motion for Extension of Time, and Referring FairVote's Motion to the Merits Panel

November 8, 2005 Appellee Washington State Democratic Committee's Brief

November 8, 2005 Appellant Washington State Grange's Reply Brief

November 8, 2005 Appellant State of Washington's Reply Brief

December 21, 2005 Argument Calendared for Feb. 6. 2006

January 10, 2006 FairVote's Additional Brief

February 6, 2006 Argued and Submitted to Dorothy W. NELSON, Pamela A. RYMER, and Raymond C. FISHER

August 22, 2006 Order Granting Leave to FairVote to File Amicus Brief

August 22, 2006 Order on Merits Affirming U. S. District Court

September 13, 2006 Mandate Issued and Costs Taxed

October 3, 2006 Agreed Order on Attorneys' Fees

November 27, 2006 Notice from Supreme Court: Washington State Grange Petition for Certiorari Filed on 11/20/06

December 1, 2006 Notice from Supreme Court: State of Washington Petition for Certiorari Filed on 11/20/06

March 1, 2007 Notice from Supreme Court: Petitions for Certiorari Granted on 2/26/07

UNITED DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

(No. 2:05-cv-00927-TSZ)

May 19, 2005 Complaint for Declaratory Judgment and for Injunctive Relief Regarding

Initiative 872 and Primary Elections [Doc. #1]

May 19, 2005 Motion to Intervene by Intervenor Plaintiffs Washington State Democratic Central Committee [Doc. #2]

May 19, 2005 Motion to Intervene by Intervenor Plaintiffs Libertarian Party of Washington State [Doc. #3]

May 26, 2005 Motion for Preliminary Injunction by Plaintiff Washington State Republican Party [Doc. #7]

May 26, 2005 Declaration of John J. White, Jr. re Motion for Preliminary Injunction [Doc. #8]

May 27, 2005 Minute Order by Judge Thomas S. Zilly scheduling status conference [Doc #11]

June 2, 2005 Motion to Intervene of State of Washington, Rob McKenna, and Sam Reed [Doc. #22]

June 2, 2005 Answer of State of Washington Intervenor Defendants [Doc. #23]

June 7, 2005 Complaint of Intervenor Plaintiff Libertarian Party of Washington State [Doc. #28]

June 7, 2005 Order Granting Motion to Intervene of Democratic Central Committee [Doc. #29]

June 7, 2005 Order Granting Motion to Intervene of State of Washington et al. [Doc. #30]

June 7, 2005 Minute Entry re: Status Conference held on 6/7/05; Granting Motions to Intervene by State of Washington, Democratic Central Committee, Libertarian Party, and Washington State Grange; Adopting Briefing Schedule; Requesting Joint Statement of Issues; Continuing Motion for Preliminary Injunction [Doc. #45]

June 8, 2005 Order Granting Motion to Intervene of Libertarian Party [Doc. #27]

June 8, 2005 Complaint of Intervenor Plaintiff Democratic Central Committee [Doc. #31]

June 8, 2005 Request of Washington State Grange for Entry of Order Granting Intervention [Doc. #33]

June 10, 2005 Answer of Intervenor Defendant Washington State Grange [Doc. #37]

June 10, 2005 Attachments to Answer of Intervenor Defendant Washington State Grange [Doc. #38]

June 10, 2005 Stipulation Statement of Legal Issues [Doc. #40]

June 14, 2005 Order Regarding Initial Disclosures, Joint Status Report and Early Settlement [Doc. #44]

June 15, 2005 Answer of Defendant Donna M. Eldridge, Jefferson County Auditor [Doc. #47]

June 17, 2005 Motion for Summary Judgment of Plaintiff Washington State Republican Party [Doc. #49]

June 17, 2005 Supplemental Declaration of John J. White, Jr., re Motion for Summary Judgment [Doc. #50]

June 17, 2005 Motion for Summary Judgment of Intervenor Plaintiff Libertarian Party of Washington State [Doc. #52]

June 17, 2005 Supplement re Motion for Summary Judgment of Libertarian Party (correcting e-filing errors) [Doc. #54]

June 17, 2005 Motion for Summary Judgment of Intervenor Plaintiff Washington State Democratic Central Committee [Doc. #55]

June 17, 2005 Declaration of Paul Berendt re Motion for Summary Judgment of Democratic Central Committee [Doc. #56]

June 17, 2005 Declaration of David T. McDonald re Motion for Summary Judgment of Democratic Central Committee [Doc. #57]

June 17, 2005 Supplements re Motion for Summary Judgment of Libertarian Party (correcting e-filing errors) [Doc. #s 58-60]

June 23, 2005 Supplement re Motion for Summary Judgment of Washington State Republican Party [Doc. #63]

June 23, 2005 Declaration of Kevin B. Hanson re Motion for Summary Judgment of Washington State Republican Party [Doc. #64]

July 1, 2005 Response by Intervenor Defendant State of Washington to Motions for Summary Judgment [Doc. #65]

July 1, 2005 Declaration of James K. Pharris re Response of State of Washington [Doc. #66]

July 1, 2005 Stipulation and Agreed Order of Substitution and Dismissal [Doc. #67]

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July 1, 2005 Exhibits A-V to Declaration by Washington State Grange in Response to Motions for Summary Judgment [Doc. #69]

July 1, 2005 Response by Intervenor Defendant Washington State Grange to Motions for Summary Judgment [Doc. #70]

July 5, 2005 Errata and Replacement Brief by Washington State Grange [Doc. #72]

July 5, 2005 Supplement to Exhibit G to Declaration of Rod Dembowski by Washington State Grange [Doc. #73]

July 6, 2005 Reply of Intervenor Plaintiff Washington State Democratic Central Committee [Doc. #75]

July 6, 2005 Second Declaration of David T. McDonald filed by Washington State Democratic Committee [Doc. #76]

July 6, 2005 Response by Plaintiff Washington State Republican Party [Doc. #77]

July 6, 2005 Reply of Intervenor Plaintiff Libertarian Party of Washington [Doc. #78]

July 6, 2005 Declaration of Richard Winger filed by Libertarian Party of Washington [Doc. #79]

July 6, 2005 Reply of Plaintiff Washington State Republican Party [Doc. #81]

July 6, 2005 Supplemental Declaration of Kevin B. Hansen filed by Washington State Republican Party [Doc. #82]

July 8, 2005 Answer of Intervenor Defendant State of Washington to Complaint of Libertarian Party of Washington State [Doc. #83]

July 8, 2005 Answer of Intervenor Defendant State of Washington to Complaint of Washington State Democratic Central Committee [Doc. #84]

July 13, 2005 Minute Entry: Oral Argument Held; Court signs stipulation and agree order of substitution and dismissal; hears argument and takes matter under advisement [Doc. #85]

July 13, 2005 Stipulation and Order of Substitution and Dismissal [Doc. #86]

July 15, 2005 Order and Preliminary Injunction by Judge Thomas S. Zilly [Doc. #87]

July 22, 2005 Praecipe to Attach Proposed Order Granting Permanent Injunction [Doc. #88]

July 27, 2005 Objections by State of Washington re Praecipe to Attach Proposed Order [Doc. #90]

July 27, 2005 Objections by Washington State Grange re Praecipe to Attach Proposed Order [Doc. #91]

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July 29, 2005 Response of Washington State Republican Party [Doc. #93]

July 29, 2005 Permanent Injunction by Judge Thomas S. Zilly [Doc. #94]

July 29, 2005 Notice of Appeal of Washington State Grange [Doc. #95]

July 29, 2005 Civil Appeals Docketing Statement by Washington State Grange [Doc. #96]

July 29, 2005 Notice of Appeal of State of Washington [Doc. #97]

July 29, 2005 Civil Appeals Docketing Statement by State of Washington [Doc. #98]

August 1, 2005 Transcript of Proceedings filed for 7/13/05 Hearing [Doc. #101]

August 3, 2005 Appeal Notification Packet sent to US Court of Appeals re Washington State Grange Appeal [Doc. #99]

August 4, 2005 Appeal Notification Packet sent to US Court of Appeals re State of Washington Appeal [Doc. #100]

August 5, 2005 (Proposed) Time Schedule Order filed by Washington State Grange [Doc. #101]

August 5, 2005 (Proposed) Time Schedule Order filed by State of Washington [Doc. #102]

August 8, 2005 Notice by Washington State Grange Ordering Entire Transcript [Doc. #104]

August 8, 2005 Letter by John J. White Requesting Status Conference {Doc. #105]

August 10, 2005 Motion for Attorney Fees by Libertarian Party [Doc. #106]

August 12, 2005 Order by Judge Thomas S. Zilly [Doc. #107]

August 22, 2005 Order by US Court of Appeals re Briefing Schedule [Doc. #108]

September 2, 2005 Order by US Court of Appeals Amending Briefing Schedule [Doc. #109]

January 4, 2006 Clerk's Record on Appeal transmitted to US Court of Appeals

April 27, 2006 Agreed Motion to Substitute Parties filed by Washington State Republican Party [Doc. #110]

May 4, 2006 Order Granting Motion to Substitute Parties [Doc. #111]

September 18, 2006 Mandate of US Court of Appeals filed [Doc. #112]

September 18, 2006 Costs Taxed Against State of Washington [Doc. #113]

October 6, 2006 Order of USCA Amending Mandate to Reflect Amended Attorney Fees [Doc. #114]

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, v. DEAN LOGAN, et al., Defendants, WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al., Interveners LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Interveners STATE OF WASHINGTON, et al., Interveners WASHINGTON STATE GRANGE, et al., Interveners.	Case No: CV05-0927-TSZ DECLARATION OF RICHARD SHEPARD IN SUPPORT OF LIBERTARIAN PARTY'S MOTION FOR SUMMARY JUDGMENT NOTE ON MOTION CALENDAR FRIDAY, JULY 13, 2005 ORAL ARGUMENT REQUESTED

RICHARD S. SHEPARD declares under penalty of perjury under the laws of the State of Washington and the United States of America as follows:

1. I am the attorney for the Libertarian Plaintiff-Intervenors in this lawsuit, am competent to testify, and make this declaration of my own personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of Engrossed Senate Bill 6453 adopting an open "nominating" primary in Washington and containing the Governor's message explaining his veto of the companion top-two "qualifying" primary.
3. Attached hereto as Exhibit B is a true and correct copy of RCW 29.15.010, effective at the time *Democratic Party of Washington v. Reed* was being litigated, and recodified as RCW 29A.24.030 effective 2004. Subsection (3) authorizes any moving party candidate to "designate" affiliation with any political party without the assent of the political party.
4. Attached hereto as Exhibit C is a true and correct copy of the statewide Primary Election Results for 1998-2004 in Washington taken from the Secretary of State website, together with a spreadsheet of the same data showing the proportionate ballot strength of the top four candidates in each race.
5. Attached hereto as Exhibit D is a true and correct copy of the Emergency Rule Order dated 5/08/05 for implementing I-872. WAC 424-215-015 provides RCW §§ 29A.20.110 through 29A.20.201 (minor party nominating statutes) apply only to nominations for President and Vice President.
6. Attached hereto as Exhibit E is a true and correct copy of the current Constitution and Bylaws of the Libertarian Party of Washington State. Constitution Article IV requires endorsement of a "non-aggression" pledge to be a member of the party.

Constitution Article XIII requires that all Libertarian candidates for partisan office shall be members of the party.

7. Attached hereto as Exhibit F is a true and correct copy of an Authenticating Declaration and Certificate of Registration showing registration of the name "Libertarian Party" in the United States Patent and Trademark Office.

8. Attached hereto as Exhibit G is a true and correct copy of an article in *Ballot Access News*, dated June 1, 2005, page 4. Author Richard Winger is a nationally recognized ballot access expert. In the article he has compiled tables of state-by-state averages for number of candidates on the November ballot for United States Senator and Governor and the proportionate number of signatures or votes needed for access to the November ballot.

9. Attached hereto as Exhibit H is a true and correct copy of a Memorandum to the Conference by Justice Potter Stewart regarding *Jernigan v. Lendall*, dated 6/21/77. This memorandum discusses the propriety of a ballot access threshold for minor parties of greater than 5%.

DATED Friday, June 17, 2005, at Tacoma, Washington.

SHEPARD LAW OFFICE, INC.,

Richard Shepard

RICHARD SHEPARD, WSBA # 16194

EXHIBIT B

R.C.W. § 29.15.010 Declaration and affidavit of candidacy

A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration and affidavit of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) A place for the candidate to indicate a party designation, if applicable;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under R.C.W. § 29.15.050;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

EXHIBIT C

Top Four Primary Results from 1998-2004

U.S. Senate

1998		**Percentage of Votes**
Candidate 1	Patty Murray-D	0.46
Candidate 2	Linda Smith-R	0.32
Candidate 3	Chris Bayley-R	0.15
Candidate 4	Warren Hanson-R	0.02

Governor

2000		**Percentage of Votes**
Candidate 1	Gary Locke-D	0.54
Candidate 2	John Carlson-R	0.35
Candidate 3	Harold Hochstatter-R	0.07
Candidate 4	Meta Heller-D	0.02

Lt. Governor

2000		**Percentage of Votes**
Candidate 1	Brad Owen-D	0.44
Candidate 2	Mike Elliott-R	0.24
Candidate 3	Joe Mitschelen-R	0.14
Candidate 4	Lonnie Williams-D	0.11

Secretary of State

2000		**Percentage of Votes**
Candidate 1	Sam Reed-R	0.22
Candidate 2	Don Bonker-D	0.21
Candidate 3	Bob Terwilliger-D	0.12
Candidate 4	Mike Wensman-R	0.10

State Treasurer

2000		Percentage of Votes
Candidate 1	Mike Murphy-D	0.47
Candidate 2	Diane Rhoades-R	0.41
Candidate 3	Louis Bloom-D	0.07
Candidate 4	Tim Perman-LBT	0.05

State Auditor

2000		Percentage of Votes
Candidate 1	Brian Sonntag-D	0.56
Candidate 2	Richard McEntee-R	0.38
Candidate 3	Chris Caputo-L	0.06

Attorney General

2000		Percentage of Votes
Candidate 1	Christine Gregoire-D	0.55
Candidate 2	Richard Pope-R	0.39
Candidate 3	Richard Shepard-L	0.04
Candidate 4	Luanne Coachman-NL	0.01

Commissioner of Public Lands

2000		Percentage of Votes
Candidate 1	Doug Sutherland-R	0.33
Candidate 2	Mike Lowry-D	0.29
Candidate 3	Georgia Gardner-D	0.12
Candidate 4	Jim O'Donnell-D	0.06

Superintendent of Public Instruction

2000		Percentage of Votes
Candidate 1	Teresa Bergeson-NP	0.57
Candidate 2	Donald Crawford-NP	0.15
Candidate 3	Arthur Hu-NP	0.14
Candidate 4	David Blomstrom-NP	0.08

Insurance Commissioner

2000		Percentage of Votes
Candidate 1	Mike Kreidler-D	0.33
Candidate 2	Don Davidson-R	0.29
Candidate 3	John Conniff-D	0.21
Candidate 4	Curtis Fackler-R	0.12

Governor

2004		Percentage of Votes
Candidate 1	Christine Gregoire-D	0.39
Candidate 2	Dino Rossi-R	0.34
Candidate 3	Ron Sims-D	0.18
Candidate 4	John Aiken, Jr.-R	0.03

Lt. Governor

2004		Percentage of Votes
Candidate 1	Brad Owen-D	0.59
Candidate 2	Jim Wiest-R	0.16
Candidate 3	Jim Nobles-R	0.14
Candidate 4	Scott Bonifield-R	0.09

Secretary of State

2004		Percentage of Votes
Candidate 1	Laura Ruderman-D	0.57
Candidate 2	Sam Reed-R	0.42
Candidate 3	Jacqueline Passey-L	0.01

State Treasurer

2004		Percentage of Votes
Candidate 1	Mike Murphy-D	0.59
Candidate 2	Oscar Lewis-R	0.40
Candidate 3	John Sample-L	0.01

State Auditor

2004		Percentage of Votes
Candidate 1	Brian Sonntag-D	0.59
Candidate 2	Will Baker-R	0.40
Candidate 3	Jason Bush-L	0.01

Attorney General

2004		Percentage of Votes
Candidate 1	Rob McKenna-R	0.31
Candidate 2	Deborah Senn-D	0.31
Candidate 3	Mark Sidran-D	0.29
Candidate 4	Mike Vaska-R	0.08

Commissioner of Public Lands

2004		Percentage of Votes
Candidate 1	Mike Cooper-D	0.58
Candidate 2	Doug Sutherland-R	0.41
Candidate 3	Steve Layman-L	0.01

Superintendent of Public Instruction

2004		Percentage of Votes
Candidate 1	Teresa Bergeson-NP	0.36
Candidate 2	Judith Billings-NP	0.35
Candidate 3	John Blair-NP	0.01
Candidate 4	Juanita Doyon-NP	0.01

Insurance Commissioner

2004		Percentage of Votes
Candidate 1	Mike Kreidler-D	0.59
Candidate 2	John Adams-R	0.22
Candidate 3	Earl Adams-R	0.01
Candidate 4	Curtis Fackler-R	0.01

EXHIBIT E

Constitution of the Libertarian Party of Washington State

As amended in convention, May 1, 2004

Statement of Principles

We, the members of the Libertarian Party of Washington State, hold these truths to be self-evident, that all men and women are created equal, that they are endowed with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. Accordingly, all individuals have the right to exercise sole dominion over their lives, and have the right to live in whatever manner they choose, so long as they do not forcibly interfere with the equal right of others to live in whatever manner they choose.

We further hold that where government exists, it must not violate the right of any individual: namely (1) the right to life - accordingly, we support prohibition of the initiation of physical force against others; (2) the right to liberty of speech and action – accordingly we oppose all attempts by government to abridge the freedom of speech and the press, as well as government censorship in any form; and (3) the right to property – accordingly, we oppose all government interference with private property, such as confiscation, nationalization, and eminent domain, and support the prohibition of robbery, trespass, fraud, and misrepresentation.

Since governments, when instituted, must not violate individual rights, we oppose all interference by government in the areas of voluntary and

contractual relations among individuals. People should not be forced to sacrifice their lives or property for the benefit of others. They should be left free by government to deal with one another as free traders; and the resultant economic system, the only one compatible with the protection of individual rights, is the free market.

Towards these ends, the following articles comprise our Constitution:

Article I: Name

The name of this organization will be the Libertarian Party of Washington State, hereinafter referred to as "the Party."

Article II: Purpose and Duration

The purpose of the Party is to proclaim and implement its Statement of Principles by:

1. Nominating and running candidates for office in the State of Washington;
2. Entering into political information and educational activities;
3. Promoting, chartering, and coordinating regional organizations throughout the State of Washington;
4. Calling conventions of Libertarian Party members within the State of Washington;
5. Providing delegates for national Libertarian Party conventions;
6. And filing vacancies on the Libertarian Party ticket.

The duration of this party will be perpetual.

Article III: Controlling Documents

The controlling documents of the Party are this Constitution and the Party Bylaws. Authority for procedures not otherwise addressed in the Controlling Documents is Robert's Rules of Order, newly revised.

Article IV: Membership

The controlling documents of the Party are this Constitution and the Party Bylaws. Authority for procedures not otherwise addressed in the Controlling Documents is Robert's Rules of Order, newly revised.

1. Any person residing within the State of Washington, and who endorses in writing the following statement: "I do not believe in or advocate the initiation of force as a means of achieving political or social goals," and who meets the criteria established by the controlling documents is a member of the party.
2. The requirement and standards for membership will be set forth in the Party Bylaws.

Article V: Officers

1. The Party shall have four (4) Party Officers, as follows: State Chair, Vice-Chair, Treasurer and Secretary.
2. Party Officers will be elected individually, on separate ballots, in the order set forth above, at the annual Party Convention. No offices

shall be combined. When three or more candidates run for an office, the election shall be conducted using an instant runoff vote.

3. Terms of office for Party Officers will commence thirty (30) days after adjournment of the annual convention in odd numbered years, and terminate thirty days after adjournment of the annual convention in the succeeding odd numbered years.

4. Only Party members eligible to vote at the annual Party convention may serve as Party Officers.

5. Party Officers have the executive powers and duties of the Party. Additional powers and duties of the Party Officers are set forth herein and in the Bylaws.

6. Party Officers may delegate their powers and/or duties to other party members upon the advice and consent of the State Executive Committee.

7. In the event that the office of State Chair becomes vacant, the Vice-Chair shall become the State Chair for the remainder of the term.

8. The State Executive Committee may, by a two-thirds (2/3) majority vote of the current members, appoint or reinstate Party Officers other than the State Chair if vacancies or suspensions occur, such officers to serve the remainder of the vacated term.

9. Any Party Officer may be suspended for cause by a two-thirds (2/3) majority vote of the State Executive Committee. The Vice-Chair is

recused from voting to suspend the State Chair.

10. A Party Officer may challenge his/her suspension by written appeal to the Judicial Committee within thirty (30) days of receipt of notice of such suspension. Failure to appeal within thirty (30) days shall confirm the suspension and bar any later challenge or appeal.

Article VI: State Executive Committee

A. Membership:

1. The State Executive Committee will be composed of representatives from each of the U.S. Congressional districts for the State of Washington. Representatives must be Party members and will be designated by Party members in their respective districts.

2. Party members from each Congressional district who are in attendance at the annual Party convention shall select members and alternates from the affected district to the State Executive Committee in any manner they choose.

3. The Party Vice-Chair, Treasurer and Secretary are at-large members of the State Executive Committee.

4. The State Chair shall preside at State Executive Committee meetings, and may vote only if the Chair's vote would change the outcome.

B. Powers:

1. The State Executive Committee will have all policy making, investigatory and review authority over all the affairs, properties, and funds of the Party, not prohibited by the Controlling Documents of the Party.
2. The State Executive Committee will meet in the manner, and conduct itself according to rules as provided in the Party Bylaws.
3. The State Executive Committee shall have the power to appoint committees as provided in the Party Bylaws. A Party Officer may not chair a standing committee established by the Party Bylaws.
4. The State Executive Committee may never expel a member from the Party, but may petition the Judicial Committee to expel a member of the Party upon a 2/3 vote.

Article VII: Statutory State Committee

A. Membership:

The Statutory State Committee shall be composed of Party members who have been selected by Statutory County Committees to serve on the Statutory State Committee.

B. Powers:

1. The Statutory State Committee has the following powers:
   a. To call conventions of Libertarian Party members within the State of Washington;

b. To provide delegates for National Libertarian Party conventions;

c. To nominate Presidential electors; and

d. To fill vacancies on the Libertarian Party ticket.

2. The Statutory State Committee will meet in the manner, and conduct itself according to rules as provided in the Party Bylaws.

3. The Statutory State Committee may delegate its powers to the State Executive Committee, or to an appropriate standing committee created by the controlling documents, or to the Party Convention.

Article VIII: Judicial Committee

A. Membership:

1. The Judicial Committee will consist of not more than nine (9) Party members.

2. A candidate for election to the Judicial Committee must be a Party member for three (3) years.

3. Party Officers and members of the State Executive Committee and the Statutory State Committee are not eligible to serve on the Judicial Committee.

4. Members of the Judicial Committee shall be elected at each annual convention and serve for a period specified in the Bylaws, unless they are recalled by a two-thirds (2/3) majority vote at a Party convention.

5. Within sixty (60) days of each annual convention the Judicial Committee shall elect from its members a Chief Justice.

6. Vacancies on the Judicial Committee will be filled at the next annual Party convention.

B. Powers:

1. The Judicial Committee shall hear appeals or petitions from Party members concerning:

   a. Interpretation of the controlling documents;

   b. Disputes involving access to Party records;

   c. Suspension of Party Officers; and

   d. Disputes involving representation on the State Executive Committee, or the Statutory State Committee or its committees.

2. The Judicial Committee shall review any petition by the State Executive Committee to expel a member from the Party. The Judicial Committee must either dismiss such petition or refer such petition to the Convention, or to any properly called Special Convention, for a final determination.

3. Decisions of the Judicial Committee shall be limited to summary affirmation or reversal of any official act of a Party Officer, or the State Executive Committee or the Statutory State Committee. The State Executive Committee, or the Statutory State Committee or the appellant/petitioner may request a written opinion from the Judicial Committee.

4. Judicial Committee decisions are subject to repeal by a two-thirds (2/3) majority vote of members at the next annual Party convention.
5. The Judicial Committee will meet in the manner and conduct themselves according to the Party Bylaws.

Article IX: Regional Organizations

1. The State Executive Committee may charter as regional organizations those organizations requesting such status, to represent counties or other political or geographical entities, if requested by affected members and approved by the State Executive Committee. Regional Organizations may be, in the sole and exclusive discretion of the State Executive Committee, Statutory County Committees. Regional organizations will be chartered for the following purposes:
   a. Nomination of candidates for public office.
   b. Working to elect Libertarian candidates and promoting Libertarian principles through political information and educational activities.
   c. Selecting representatives to appropriate Party activities.
2. Every organization so chartered will ratify the Statement of Principles of the LPWS and provide the names and titles of its regional officers to the State Executive Committee annually.

Article X: Statutory County Committees

A. Membership:

Statutory County Committees are composed of current dues paying Party members who are elected as Precinct Committee Officers in their County, or dues paying Party members in the County who are appointed by the committee chair.

B. Powers:

1. Statutory County Committees shall select from their numbers up to two representatives to the Statutory State Committee. Any representative to the Statutory State Committee must have been a member of the Party for 1 year.
2. Statutory County Committees shall have such other powers as may be delegated by these controlling documents or by the State Executive Committee.
3. The Statutory County Committee will meet in the manner, and conduct itself according to rules as provided in the Party Bylaws.

Article XI: Party Conventions

A. Annual Convention:

1. The Party will meet in convention as provided in the convention rules and the Party Bylaws.
2. Any current dues-paying Party member as determined by the State Executive Committee for ninety (90) calendar days prior to a State convention may vote at that convention.

3. The rules for each convention will be adopted by the convention as its first order of business. A simple majority of those delegates present and voting will be sufficient for adoption.

4. At annual conventions Party Officers and Judicial Committee members shall be elected as provided in the Bylaws, a Party Platform may be adopted or revised, the Constitution and Bylaws may be Amended, resolutions may be adopted and candidates for public office may be nominated.

5. The convention date(s) and location city shall be announced in the Party's member newsletter, at least sixty (60) calendar days prior to the annual convention.

6. In years when a National Libertarian Party Convention is to be held, the annual convention will elect delegates and alternates to the national convention in accordance with procedures set forth in the Party Bylaws. In the event of conflict, selections made by the annual Party convention shall have priority over the selections of the Statutory State Committee.

7. In years when a United States Presidential Election is to be held, the annual convention will elect representatives to the United States Electoral College. In the event of conflict, the selections made by the annual Party convention shall have priority over the selections of the Statutory State Committee.

B. Special Conventions:

1. The State Executive Committee may call a special convention by a four-fifths (4/5) majority vote of those present at a regular State Executive Committee meeting. In the event of conflict, the convention date selected by the State Executive Committee shall have priority.
2. Members of the Party may call a special convention by submitting a petition to the State Chair, signed by at least twenty-five (25) percent of the membership of the Party. Those petitioning will bear all costs including required notification.

Article XII: Platform

1. The Party may adopt a Platform or plank at the annual Party convention by a two-thirds (2/3) majority vote of delegates in attendance.
2. Any Platform plank, or the entire Platform, may be repealed by a simple majority vote of delegates at the convention.
3. All platform planks shall be consistent with the Statement of Principles of the Party.

Article XIII: Nomination of Candidates

1. All Libertarian candidates for partisan office shall be members of the Party, and shall be nominated by members of the Party.
2. In the event of conflict, the person(s) selected to fill vacancies on the Libertarian party ticket by the Campaigns Committee or other committee delegated with such power by the

annual Party convention shall have priority over the selections of the Statutory State Committee.

3. Nomination of candidates for public office will be according to this Constitution and the Party Bylaws.

Article XIV: Amendments

1. The Statement of Principles, preamble of this Constitution, affirms the philosophy upon which the Libertarian Party is founded, upon which it shall be sustained, and through which liberty shall prevail. The enduring importance of the Statement of Principles requires that it may be amended only by a seven-eighths (7/8) majority vote of all delegates at an annual convention.
2. This Constitution may be amended by a two-thirds (2/3) majority vote of delegates in attendance at any party convention.
3. The Party Bylaws may be amended by a majority vote of delegates in attendance at any Party convention.

Bylaws
of the
Libertarian Party of Washington State

As amended in convention, May 1, 2004

Article I: Membership

1. Anyone meeting the requirements of membership as determined by the State

Executive Committee and residing in the State of Washington is hereby a member of the Party.

2. Dues paying Party members as determined by the State Executive Committee shall receive a subscription to the Party newsletter, plus other incidental benefits to be determined by the State Executive Committee.

3. An individual may maintain only one membership in the Party.

4. Any member may require that his or her membership information may not be distributed to any organization not affiliated with the Libertarian Party of Washington State (LPWS). An affiliate of the LPWS is defined as the Libertarian National Committee, and chartered regional chapters of the LPWS.

5. Any member has a right to contact the general membership of the Party concerning Party business; the State Executive Committee shall establish procedures for so contacting the membership.

6. Any LPWS member may obtain upon payment of reasonable cost the name, addresses, phone number, and e-mail addresses on announcement lists when available of all or any members.

Article II: Party Officers

A. Generally:

1. Any Officer who may have a conflict of interest in discharging his or her duties as an Officer

shall fully advise the State Executive Committee regarding the possible conflict.

2. Each party Officer will be responsible for maintaining documentation within his/her area of responsibility.
3. Each officer will be responsible for transferring all records and accounts pertaining to his/her area of responsibility within thirty (30) days after the election or appointment of his/her successor.
4. Each Party Officer will provide a written report to be presented at the annual Party Convention and passed on to the next Officer.
5. No Party Officer may incur expenses beyond budget without approved of the State Executive Committee.

B. State Chair:

1. The State Chair shall be the chief executive officer and chief spokesperson of the Party, holding all powers pertaining to the ordinary business affairs of the Party.
2. The State Chair may appoint, hire and discharge Party volunteers and paid personnel, such as an office manager and an events chair, consistent with any express State Executive Committee policies.
3. The State Chair may contract for products and services, consistent with any express State Executive Committee policies.
4. The State Chair shall be a voting member of the Strategic Planning Committee.

C. Vice-Chair:

1. The Vice-Chair shall assume the duties and responsibilities of the State Chair in the event of his/her resignation, incapacity, death, suspension, or absence.
2. The Vice-Chair shall be a voting member of the Public Relations and Campaigns Committees.

D. Treasurer:

1. The Treasurer shall be responsible for establishing and maintaining a system of accounts in accordance with Generally Accepted Accounting Practices.
2. The fiscal year of the Party shall begin on August 1st of each year.
3. In the event the Treasurer is unable to perform the duties of the office the records of the Party shall revert to the State Chair.
4. The Treasurer shall make Party financial records, excluding the names of contributors, available to any Party member in good standing at a reasonable time and place upon fourteen (14) calendar days' notice.
5. The Treasurer shall be a voting member of the Finance and Policy Committees.

E. Secretary:

1. The Secretary will be responsible for recording the minutes of the State Executive Committee meetings and Party conventions.

2. The Secretary will ensure that draft copies of convention minutes are available to Party members within Thirty (30) days following a convention.

3. The Secretary shall notify State Executive Committee members of the time and location of meetings.

4. The Secretary shall be a voting member of the Membership and Policy Committees.

5. The Party Secretary is responsible for Party membership records, Party archives, and all other records not otherwise provided for in the Controlling documents.

Article III: State Executive Committee

A. Meetings:

1. The State Executive Committee shall convene only in open meeting. Within a properly announced open meeting, a closed "Executive Session" may be convened to discuss the following confidential matters: contracts worth more than $1000 per year, personnel and/or disciplinary matters requiring State Executive Committee action, and pending or active litigation. The purpose of the private session shall be announced prior to convening privately, and no votes may be taken until the open meeting is reconvened, at which time motions and discussion may or may not proceed.

2. The State Executive Committee shall meet at least quarterly, as may be determined by the Committee, or by a call of the State Chair, or

by written request of one-third (1/3) or more of the members of the Committee.

3. A quorum for State Executive Committee meetings will consist of at least half the current total Committee members, If neither the Chair nor the Vice Chair is in attendance, a simple majority of attending members may elect a Presiding Chair *pro tem*.

B. Rules and Procedures:

1. All State Executive Committee members shall be notified of the time and location of meetings no less than twenty-one (21) days in advance; provided that, in the case of emergency meetings called by the State Chair seven (7) days shall be adequate. Emergency meetings may be held online or via telephone, to consider a single question, if a recorded vote includes at least 2/3 of State Executive Committee members, and with Meeting Minutes recorded and filed.

2. The State Executive Committee may adopt such rules of procedure as it deems necessary.

3. In case of a dispute between Party members of the same region for the same seat on the State Executive Committee, the undisputed State Executive Committee members present shall determine by majority vote which member shall be seated for that meeting. In the event of an appeal to the Judicial Committee, if the wrong person was seated, official action taken or business conducted at the subject meeting shall not be affected.

4. Any petition to the Judicial Committee to expel a member from the Party shall be preceded by a written motion to the State Executive Committee summarizing the reasons for expulsion. The motion will require two seconds to be considered. Any Party member subject to a motion for petition to expel shall receive a copy of the written motion 30 days before the matter may be considered by the State Executive Committee and given a reasonable opportunity to be heard in a regular meeting of the State Executive Committee before a dispositive vote is taken. In the event a motion for petition to expel a member passes the State Executive Committee, the State Executive Committee shall select one of its members to represent the State Executive Committee in its petition to the Judicial Committee.

C. Committees:

1. The State Executive Committee shall establish and maintain the following Standing Committees: Campaigns, Membership, Public Relations, Finance, and Policy. Standing Committee Chairs will be appointed or terminated by the State Chair, with the approval of the State Executive Committee.

2. Standing Committees shall have the powers of investigation, supervision, and review of the Party activities within their area of responsibility, and shall have access to all records of the Party. Standing Committee Chairs hold primary responsibility for staffing

their Committees, and/or forming and staffing committees.

3. The responsibilities of the standing committees will be, but are not limited to, the following:

   a. The Campaigns Committee will identify political races and coordinate candidate and issue development.

   b. The Membership Committee will recruit new members, develop membership educational programs and publications, and assist in organizing regional organizations.

   c. The Public Relations Committee will coordinate news media, disseminate information within and for the Party, and operate a speakers' bureau.

   d. The Finance Committee will have the primary responsibility for fund raising.

   e. The Policy Committee has primary responsibility for creating and maintaining a Policy Manual.

   f. The Strategic Planning Committee will create, maintain and update a 5-year Strategic Plan, for approval by the State Executive Committee.

4. The State Executive Committee may establish Temporary Committees, by approving a written and amendable delegation of powers and/or function. Standing Committees may form Temporary Subcommittees on the same

basis. Temporary Committees will expire after 12 months, unless renewed by the originating body. Temporary Committee Chairs will be appointed or terminated by the State Chair, with the approval of the State Central Committee.

Article IV: Statutory State Committee

A. Meetings:

1. The Statutory State Committee shall convene only in open meeting.
2. The Statutory State Committee shall meet during January of each odd-numbered year, and as may be determined by the Committee, or by a call of the State Chair.
3. A quorum for the Statutory State Committee meetings will consist of at least half the current total Committee members.
4. Except for the meeting held during January of each odd-numbered year, and provided that proper notice and open access is given, the Statutory State Committee may, in its discretion, meet on-line.

B. Rules and Procedures:

1. Notice of the Statutory State Committee meeting held in January of each odd-numbered year shall be made seven (7) days in advance to all Statutory County Committees lawfully organized pursuant to Chapter 29.42, R.C.W. Notice of the time, location and agenda of all other Statutory State Committee

meetings shall be made no less than twenty-one (21) days in advance.

2. The presiding officer at Statutory State Committee meetings shall ensure that minutes are regularly taken and that the minutes shall be available to any Party member upon request.

3. The Statutory State Committee may adopt such additional rules of procedures as it deems necessary.

Article V: Judicial Committee

A. Generally:

1. Members of the Judicial Committee shall serve for a term of three years.

2. No member of the Judicial Committee may sit in judgment of an appeal of a ruling or action of the State Executive Committee or the Statutory State Committee, which occurred while that member served on either Committee.

3. The Judicial Committee shall, when required by its duties, have access to all written records of the Party and Party committees concerned.

4. A ruling of the Judicial Committee may be overturned by a two-thirds (2/3) majority vote of the delegates at a convention.

B. Chief Justice:

1. The Chief Justice may not serve consecutive terms as Chief Justice.

2. The Chief Justice will receive all appeals and petitions, and schedule hearings so as to obtain a quorum of the Judicial Committee.

C. Timing and Notification:

1. The Chief Justice must notify the Party Officers within seven (7) days that an appeal or petition has been received and provide the substance.
2. The Chief Justice shall provide at least fourteen (14) calendar day's notice to all interested Parties to a hearing, unless otherwise agreed to by all Parties concerned.
3. Hearings must be held within forty-five (45) calendar days from the time a written request is received by the Chief Justice, unless otherwise agreed to by all parties concerned.
4. The Judicial Committee must provide a ruling within fifteen (15) calendar days of the conclusion of a hearing, unless otherwise agreed to by all parties concerned.

D. Hearings:

1. In hearing a petition to expel a member from the Party, a quorum of the Judicial Committee will consist of 7/8 of its members. In all other matters, a quorum of the Judicial Committee will consist of a simple majority.
2. All parties to a hearing will have the right to represent their interests in the manner of their own choosing, consistent with the rules, guidelines, and principles of the Judicial Committee.

3. With the consent of all parties, the Chief Justice may call for written arguments and a mail ballot of committee. Unless the parties agree otherwise, the Judicial Committee must provide a ruling within sixty (60) calendar days of the date of the original appeal or petition.

Article VI: Regional Organizations

1. The State Executive Committee will promote and charter regional organizations.

2. Organizations applying for regional organization status will petition the State Executive Committee. The petition will explicitly ratify the State of Principles of the National Party and will be signed annually by no fewer than five (5) Party members residing in that region.

3. The State Executive Committee will have the power to suspend regional organizations by a two-thirds (2/3) vote. Suspension is subject to written appeal to the Judicial Committee within thirty (30) calendar days of notification of suspension. Upon failure to appeal, the charter of the regional organization will be revoked. The State Executive Committee will not suspend any regional organization within a period of four (4) months prior to the annual convention. A regional organization may be suspended from the Party for the following reasons:

   a. Violating the Statement of Principles.

b. Endorsing or supporting a candidate in opposition to one nominated by a recognized branch of the Libertarian Party.

c. Failing to hold a local meeting within the region at least once every calendar quarter.

Upon appeal by the regional organization, the Judicial Committee will conduct a hearing. Following the hearing, the Judicial Committee will have thirty (30) calendar days to decide either to revoke the charter of the regional organization, or to continue the charter. Until the Judicial Committee decides, the regional organization charter will continue to be in force.

4. Members of the Party residing in unchartered regions may petition the State Executive Committee for recognition as chartered regions; such petitions must identify boundaries such as county lines, and must meet requirements set forth in the controlling documents.

Article VII: Statutory County Committees

1. A Statutory County Committee may petition for Regional Organization status under Article X of the Party Constitution and Article VI of these Bylaws. The petition will explicitly ratify the Statement of Principles of the Party and will be signed by no fewer than five (5) Party members who are also Statutory County Committee members residing in that county.

2. A Statutory County Committee shall conduct business related to statutory powers only in open meeting.

3. The presiding officer at Statutory County Committee meetings shall ensure that minutes are regularly taken and that the minutes shall be available to any Party member upon request.

4. The Statutory County Committee may adopt such additional rules of procedure as it deems necessary.

Article VIII: Party Conventions

A. Generally:

1. The annual Party convention shall be held in the first or second quarter of the calendar year, or a date selected by the State Executive Committee.

2. Credentials for any convention will be determined by the Credentials Chair, consistent with the controlling documents of the Party.

3. A quorum for the convention business shall consist of no less than 3% of the total current Party membership.

B. Convention Committees:

1. The convention committees are the Constitution and Bylaws Committee, Platform Committee, Nominating Committee, Credentials Committee, and Rules and Resolutions Committee.

2. Convention Committee Chairs will be appointed or terminated by the State Chair, with the approval of the State Executive Committee. The State Chair will announce at the State Party convention that the State Chair will appoint the Convention Organizing Committee Chair and the chairs of the convention committees at the first scheduled State Executive Committee meeting to occur fifteen (15) days or more after that State Party convention. In addition to a Committee Chair, each committee may consist of up to twelve (12) Party members, selected by the State Executive Committee. After the State Executive Committee meeting any unfilled positions may be filled by either the State Executive Committee or by the respective convention committee chairs.

3. All convention committee meetings will be open to all Party members, who may obtain the committees schedules from their respective chairs.

4. Chairs of the convention committees will be responsible for completion and reproduction at party expense of their final committee reports.

5. The chairs of the Constitution and Bylaws Committee and the Platform Committee will certify and cause to be published at party expense each document in its entirety as amended by the convention.

6. The Nominating Committee is responsible for identifying candidates for internal Party positions (such as state officer or Judicial

Committee member) and should only do so for positions which do not have announced candidacies within 30 days of the annual party convention.

7. Each committee, except the Nominating Committee, shall submit a written report to the Party Secretary not later than thirty (30) days prior to the Party convention.

8. Convention committee reports shall be available, upon request, to any Party member.

9. The State Chair will ensure that the committee's reports, and the reports of committee members submitted separately, are presented at the convention.

C. Elections for National Party conventions:

1. All delegates and representatives to national conventions of the Libertarian Party must be members of the State and National Parties.

2. The State Chair will announce to the convention body the total number of delegates and representatives to national party convention committees, and the number to be selected by the State Party convention.

3. Nominations of delegates from the floor shall not require seconds. Members may nominate themselves.

4. After the election of delegates, alternate delegates may be elected.

5. After the election of delegates and alternates, representatives to national committees may be elected.

6. The duly elected delegates present at the convention will select a Delegation Chair and determine their own substitution procedures.

7. A list of the delegates and alternates, and a description of the substitution procedures, shall be submitted by the Delegation Chair to the State Chair and the National Secretary within seven (7) calendar days of the convention.

D. Elections for Judicial Committee members:

1. Three (3) new Judicial Committee members shall be elected at each annual Party convention by single transferable vote. In the event of a resignation or vacancy on the Judicial Committee, a member shall also be elected to complete the term of the original member.

2. Nominations of qualified candidates will be accepted from the floor. Members may nominate themselves. All nominations require a second.

3. The Rules Committee will determine procedures for electing Judicial Committee members.

E. Nominating and Endorsing candidates:

1. Only the party's regional organizations and convention delegates have power to nominate Libertarian party candidates for partisan offices, and to endorse candidates for non-partisan offices.

a. Delegates may nominate and endorse candidates for any office.

b. After the convention adjourns, power to nominate and endorse will transfer from delegates to the Campaigns Committee, but regional organizations also retain their power to nominate or endorse even after the convention adjourns.

c. In the event more than one regional organization, or regional organizations and the Campaigns Committee, or the convention, nominates more than one candidate either before, at, or after the convention, then all such candidates become nominees and are authorized to appear on the libertarian Primary ballot. But if there is no primary election, then the following rules apply to determine the party nominee for the general election:

   1. That candidate winning approval by a majority of the convention delegates or of the Campaigns Committee is the party nominee unless a regional organization covering the entire jurisdiction served by a candidate shall have also nominated a candidate, in which event the regional organization's candidate shall be the party nominee.

   2. In the event two or more regional organizations cover the entire jurisdiction served by a candidate and nominate different candidates, that candidate of the smallest regional

organization (by geographical area) shall be the Party nominee.

2. The nomination of a Libertarian Party candidate or endorsement of a non-partisan candidate during or after the convention may be withdrawn for cause by a three-fourths (3/4) majority vote of State Executive Committee members.

3. "None of the Above" (NOTA) may be nominated, seconded and supported on the same basis as an actual candidate, for either partisan or non-partisan endorsements. If "NOTA" wins a majority of votes, there shall be no endorsement for that office.

EXHIBIT F

DECLARATION
(Regarding Libertarian Party® Trademark)

To Whom It May Concern:

I am General Counsel to the Libertarian National Committee, Inc., the governing body of the national Libertarian Party®, and have continuously served as General Counsel since 1991. As such, I have personal knowledge of the facts set forth in this Declaration.

The Libertarian National Committee, Inc., owns the trademark Libertarian Party®. Attached is a true, accurate and complete copy of its trademark registration, as issued by the United States Patent Office. This trademark registration has not been revoked, withdrawn or amended, and is currently in full force and effect. The Libertarian National Committee and its affiliated parties and candidates have continuously used the trademark Libertarian Party® since the time it was registered with the United States Patent Office, and prior to that time, since approximately 1972.

Under the national bylaws of the Libertarian Party®, the Libertarian National Committee's recognized affiliate in each state is permitted the use of the trademark Libertarian Party® for its political operations, and for use by its designated candidates, within its state. In the State of Washington, the Libertarian National Committee has recognized the Libertarian Party of Washington State, PO Box 7118, Bellevue, WA 98008, with an office at 15831 NE 8th, Ste. 210, Bellevue, WA 98008, as its state affiliate. The Libertarian National Committee has not granted to any other person within the State of

Washington the right to use the trademark Libertarian Party®.

I declare under penalty of perjury according to 28 U.S.C., § 1746 that the foregoing is true and correct.

Executed on June 16, 2005, at Grand Rapids, Michigan.

William W. Hall

William W. Hall

THE UNITED STATES OF AMERICA

[logo]

CERTIFICATE OF REGISTRATION

PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the name registrant.

The records of the United States Patent and Trademark Office show that an application for registration for the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.

Nicholas P. Godici

Acting Director of the United States Patent and Trademark Office

[seal]

Requirements for Maintaining a Federal Trademark Registration

SECTION 8: AFFIDAVIT OF CONTINUED USE

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. § 1058, upon the expiration of the following time periods:

i) At the end of 6 years following the date of registration.

ii) At the end of each successive 10-year period following the date of registration.

Failure to file a proper Section 8 Affidavit at the appropriate time will result in the cancellation of the registration.

SECTION 9: APPLICATION FOR RENEWAL

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. § 1059, at the end of each successive 10-year period following the date of registration.

Failure to file a proper Application for Renewal at the appropriate time will result in the expiration of the registration.

No further notice or reminder of these requirements will be sent to the Registrant by the Patent and Trademark Office. It is recommended that the Registrant contact the Patent and Trademark office approximately

one year before the expiration of the time periods shown above to determine the requirements and fees for filings required to maintain the registration.

Int. Cls.: 16 and 42

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, 50, 100 and 101

Reg. No. 2,423,459

United States Patent and Trademark Office
Registered Jan. 23, 2001

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

LIBERTARIAN PARTY

LIBERTARIAN NATIONAL COMMITTEE, INC. (D.C. NON-PROFIT CORPORATION)
2600 VIRGINIA AVENUE, N.W., SUITE 100
WASHINGTON, DC 20037

FOR: NEWSPAPERS, BROCHURES, PAMPHLETS AND BOOKLETS CONCERNING POLITICAL ISSUES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-0-1972; IN COMMERCE 1-0-1972.

FOR: POLITICAL PARTY SERVICES, NAMELY, PROMOTING THE INTERESTS OF A POLITICAL PARTY, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-0-1972; IN COMMERCE 1-0-1972.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PARTY", APART FROM THE MARK AS SHOWN.

SER. NO. 75-937,476, FILED 3-7-2000.

PRISCILLA MILTON, EXAMINING ATTORNEY

EXHIBIT G

GOVERNOR, SENATOR ACCESS COMPARISON

The March *B.A.N.* compared the states on how easy it is for minor party and independent *presidential* candidates to get on the ballot. The April 1 *B.A.N.* compared the states on how easy it is for a group to be a *qualified party*. The May 1 chart compares them on how easy it is for a new party to get a full slate of *U.S. House* candidates on the November ballot. This chart compares the states for access in *U.S. Senate* and *gubernatorial* elections, for independent and minor party candidates.

The chart in the middle column tells the average number of candidates on the November ballot for Governor and U.S. Senator in each state (including the Democratic and Republican nominees), for the period 1980-2004. The states are ordered with the most lenient at the top, and the most restrictive at the bottom. Arkansas, New Mexico and Maryland have offered voters the fewest choices for Governor and U.S. Senator. However, Maryland drastically improved ballot access in 1998 and again in 2003, so its future ranking will surely improve.

The nationwide average for U.S. Senate and gubernatorial elections is 3.73 candidates on the ballot. This contrasts with 2.60 candidates on the ballot in the average U.S. House race, and 4.10 candidates on the ballot in the average presidential race.

The chart in the right column shows the percentage of signatures (or, in Delaware, the number of

registrants) for a new party or independent candidate for U.S. Senator or Governor to get on the November ballot. The easiest method in each state is used. "Easiest" means the procedure used most often. "Percentage" shows the number of signatures (or registrants, or votes in a primary) needed, divided by the number of registered voters. Washington is the worst, since candidates need approximately 30% support from the voters (measured by primary votes) in order to get on the November ballot. This is because the voters passed the "top-two" initiative last year.

# OF CANDIDATES ON	
Louisiana	9.50
New Jersey	8.71
New York	6.53
Minnesota	5.79
California	5.53
Vermont	5.50
Tennessee	5.36
Wisconsin	5.00
Colorado	4.80
Michigan	4.71
Illinois	4.40
Iowa	4.33
Utah	4.25

SIGNATURES NEEDED (%)	
Mississippi	.00%
Florida	.00%
Louisiana	.00%
Oklahoma	.00%
Vermont	.00+%
Tennessee	.00+%
New Jersey	.02%
Nevada	.02%
Colorado	.03%
Delaware	(reg.) .05%
Wisconsin	.05%
Ohio	.06%
Minnesota	.07%

Pennsylvania	4.13
Alaska	4.00
Nevada	4.00
Connecticut	3.80
Oregon	3.73
South Carolina	3.53
Rhode Island	3.50
Arizona	3.47
Hawaii	3.47
Missouri	3.44
Massachusetts	3.43
Kansas	3.40
Texas	3.36
Oklahoma	3.27
North Carolina	3.25
Maine	3.14
Delaware	3.13
Alabama	3.07
Indiana	3.06
New Hampshire	3.05
Ohio	3.00
Montana	2.87
Mississippi	2.80
South Dakota	2.73

Iowa	.08%
Utah	.08%
Hawaii	.10%
Idaho	.13%
New York	.13%
Rhode Island	.15%
Kentucky	.18%
Nebraska	.18%
North Dakota	.21%
Massachusetts	.24%
Missouri	.24%
Virginia	.24%
Kansas	.30%
Illinois	.33%
Maryland	.34%
New Hampshire	.35%
Texas	.35%
Connecticut	.37%
Maine	.42%
South Carolina	.43%
Michigan	.44%
Arkansas	.59%
Alaska	.66%
South Dakota	.67%

North Dakota	2.63
Idaho	2.60
West Virginia	2.60
Kentucky	2.56
Washington	2.50
Wyoming	2.50
Florida	2.47
Georgia	2.47
Nebraska	2.36
Virginia	2.36
Maryland	2.20
New Mexico	2.14
Arkansas	2.06

New Mexico	.68%
Indiana	.69%
West Virginia	.75%
Arizona	.76%
Montana	.78%
Pennsylvania	.80%
Oregon	.91%
California	1.00%
Georgia	1.00%
North Carolina	1.26%
Alabama	1.44%
Wyoming	2.05%
Washington	approx. 30.00%

EXHIBIT H

Supreme Court of the United States
Washington, D.C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 21, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 76-128 *Mandel v. Bradley*, No. 76-680, *Jernigan v. Lendall*

In 1974, Jim Lendall, an independent candidate for the state legislature, filed suit against the Arkansas Secretary of State, challenging Arkansas' ballot access requirements. At that time independent candidates were required to file nominating petitions signed by 15% of the qualified electors in the relevant district, and the petitions had to be submitted by the first Tuesday in April – roughly 210 days before the general election. A three-judge court ruled that the scheme was unconstitutional, specifically finding that support for independent candidates does not crystallize until after party nominees and positions are known, and that it is unduly burdensome to require so substantial a number of petition signatures to be filed so early. 387 F. Supp. 397 (ED Ark.). No appeal was taken.

The Arkansas legislature amended its ballot access scheme in 1975 to require signatures of only 10%, rather than 15% of the qualified electors in the district. According to a 1975 survey of state election laws, only one other state – North Carolina – requires that large a percentage of signatures. See Developments in the Law – Election Law, 88 Harv. L. Rev. 1111, 1124 n. 11 (1975).

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, WASHINGTON DEOMCRATIC CENTRAL COMMITTEE, et al., Plaintiff Intervenors LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Plaintiff Intervenors v. DEAN LOGAN, King County Records & Elections Division Manager, et al., Defendants, STATE OF WASHINGTON, et al., Defendant Intervenors WASHINGTON STATE GRANGE, Defendant Intervenors.	NO. CV05-0927Z SUPPLEMENTAL DECLARATION OF JOHN J. WHITE, JR. NOTE ON MOTION CALENDAR: WEDNESDAY, JULY 13, 2005 WITH ORAL ARGUMENT

JOHN J. WHITE, JR. declares under penalty of perjury under the laws of the State of Washington and the United States of America as follows:

1. I am one of the attorneys for the plaintiffs in this lawsuit, am competent to testify, and make this declaration of my own personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of a printout of an article dated June 12, 2005 and entitled "GOP picks its official primary candidates," published by The Seattle Times at http://seattletimes.nwsource.com.

3. Attached hereto as Exhibit 2 is a true and correct copy of a printout of the1996 election results for statewide partisan offices, published by The Seattle Times at http://seattletimes.nwsource.om/politics/results/primary/VOTE2.html.

4. Attached hereto as Exhibit 3 is a true and correct copy of a printout of an article dated October 12, 2004 and entitled "Locke, three ex-governors urge no vote on 'top two' primary initiative," published by The Seattle Post-Intelligencer at http://seattlepi.nwsource.com.

SIGNED this 17th day of June, 2005 in Kirkland, Washington.

John J. White Jr.

JOHN J. WHITE, JR.

EXHIBIT 1

The Seattle Times

GOP picks its official primary candidates

By Eric Pryne

Seattle Times staff reporter

Defiant King County Republicans, refusing to accept the state's new "top two" primary, convened in Bellevue yesterday and chose the candidates they contend will be the party's official nominees for county offices in September.

In the only close contest, Metropolitan King County Councilman-Steve Hammond, R-Enumclaw, outpolled fellow Councilman Reagan Dunn, R-Bellevue, in the new 9th Council District, 234 votes to 209. The two were thrown into the same district after voters by initiative last year downsized the council from 13 members to nine.

It's unclear, however, exactly what Hammond's victory means.

The state Republican Party, which says the top-two primary is unconstitutional, has asked a federal judge to rule that only the candidates chosen at yesterday's convention are legally entitled to be labeled Republicans on the September primary ballot.

The party also has asked losers to accept the convention's decision and not file for office in July.

In the weeks before the convention, both Hammond and Dunn said they intended to abide by its outcome. But after yesterday's vote, Dunn said he would file anyway, although he didn't know whether he would do so as a Republican.

"I can't abandon this campaign because of 24 votes in June," he said, referring to Hammond's victory margin (and getting his math slightly wrong).

Dunn said his earlier commitment to accept the convention's outcome was contingent on Hammond following the Republicans' so-called 11th Commandment—speak no ill of another Republican—and, he said, Hammond had broken that rule. Hammond backers had made "hit" phone calls to delegates Friday night, Dunn said, but he would provide no details.

Hammond denied fighting dirty: "I've had everything but the kitchen sink thrown at me." If he had lost, he said, he would have backed Dunn.

Democrats to convene

King County Democrats have scheduled a similar gathering later this month, but Secretary of State Sam Reed has said elections officials will pay no attention to the party conventions. Candidates, as before, are free to choose party labels when they file, without party approval, Reed has said.

But King County GOP Chairman Michael Young said yesterday that if Dunn files as a Republican, the state party will go to court to remove that label from the ballot.

Whatever the prize was at the GOP convention, Hammond and Dunn campaigned hard for it. This was retail politics in the extreme: The electorate consisted solely of 9th District precinct committee officers and delegates elected at caucuses May 17.

Roberta Yates, a precinct committee officer from Renton, said Dunn had come to her home to seek her

vote, and Hammond had phoned. She said she had received mail supporting one candidate or the other just about every other day for the past month.

The choice was between two conservatives who differed little on the issues.

"The bad news is that one will lose," Will Cummings, a precinct committee officer from Covington, said before the vote. "Many of us are rethinking the idea of reducing the size of the council."

Dunn, 34, appointed to the council in February, has more money—about $150,000 so far, compared with Hammond's $24,000—and the support of many GOP big names. He is the son of Jennifer Dunn, former U.S. representative and Republican power; other backers included former U.S. Sen. Slade Gorton and KVI-AM (570) talk-show host John Carlson.

Dunn argued he was more electable. He said the 9th is a swing district, and noted Hammond narrowly defeated a Democratic challenger two years ago.

Hammond, 51, a former minister, emphasized his experience and rural roots. Without him, he argued, rural southeast King County wouldn't have a representative on the council.

He attributed his win over the better-financed Dunn to grass-roots effort.

"There's just a little bit of a feeling of Rocky Balboa in me," Hammond said after the vote.

Conventions new this year

The major parties' unprecedented nominating conventions this year are the latest chapter in their long-running campaign to gain a larger voice in the state's primary elections.

Federal judges in 2003 struck down the venerable "blanket" primary. It allowed voters to pick candidates from any party; the top vote-getter from each party advanced to the November ballot. The parties challenged that system, arguing that it violated their First Amendment right of association because it allowed voters who weren't party members to participate in selecting a party's nominees.

State voters last fall overwhelmingly approved Initiative 872, creating a top-two primary in which the top two vote-getters advance to the general election, regardless of party. But the parties contend it has the same constitutional flaws as the blanket primary.

In the only other contested race yesterday, incumbent Pete von Reichbauer of Federal Way beat back a last-minute challenge from former state Rep. Phil Fortunato of Kent for the GOP nod in the 7th County Council District.

County Councilman David Irons, R-Sammamish, was the convention's choice to challenge County Executive Ron Sims, a Democrat.

The convention's other picks for County Council races were Steven Pyeatt in the 1st District, Brian Thomas in the 2nd, incumbent Kathy Lambert in the 3rd, Orin Wells in the 5th and incumbent Jane Hague in the 6th.

EXHIBIT 2

TRACKING THE CAMPAIGNS

ELECTION RESULTS

Please see note on the Table of Contents page for information on when we are posting and updating election returns.

*** — Incumbent**

√ — Candidate advances to Nov. 5 general election (no mark - too close to call; recount may decide it). Third-party candidates advance to the general election only if they attain at least 1 percent of the votes cast for the office in the primary.

Key to party affiliation: D (Democrat). I (Independent), L (Libertarian), NL (Natural Law), P (Populist), R (Republican), Re (Reform), SW (Socialist Workers)

| Congressional races | Statewide races | Legislative | Judicial | Seattle City Council | Ballot Measures |

Governor

DEMOCRATS

	Max Englerius, D	2,837	(0.2%)
	Jay Inslee, D	118,571	(10%)
√	Gary Locke, D	287,761	(24%)
	Norm Rice, D	212,886	(18%)
	Mohammad Said, D	3,007	(0.2%)
	Bryan Zetlen, D	6,152	(1%)

REPUBLICANS			
	Nona Brazier, R	21,237	(2%)
√	Ellen Craswell, R	185,680	(15%)
	Dale Foreman, R	62,612	(13%)
	Warren Hanson, R	4,886	(0.4%)
	Norm Maleng, R	109,088	(9%)
	Pam Roach, R	29,533	(2%)
	BobTharp,R	4,816	(0.4%)
	Jim Waldo, R	63,853	(0.5%)
Lieutenant Governor			
DEMOCRATS			
	Harvey Billmaier, D	13,613	(1%)
	Frank Gavaldon, D	32,638	(3%)
	Bambi Litchman, D	34,326	(3%)
	Bob Owen, D	44,510	(4%)
√	Brad Owen, D	242,756	(23%)
	Paull Shin, D	235,461	(22%)
REPUBLICANS			
√	Ann Anderson, R	207,725	(19%)
	Bruce Buckles, R	19,951	(2%)
	Gerald Goodloe, R	50,771	(5%)
	Ed Torres, R	58,802	(6%)
	Jim West, R	96,979	(9%)
OTHER PARTIES			
	Michael Hackett. NL	8,945	(1%)
√	Shawn Newman. Re	10,774	(1%)
√	Art Rathjen, L	11,902	(1%)

Attorney General			
√	C. Gregoire, D*	640,029	(57%)
√	Richard Pope, R	415,188	(37%)
√	L. Coachman, NL	24,031	(2%)
√	Richard Shepart, L	37,314	(3%)
Commissioner of Public Lands			
√	J. Belcher, D*	567,007	(53%)
	Randy Boss, R	69,538	(7%)
√	Bruce Mackey, R	291,694	(27%)
	Patrick Parrish, R	108,877	(10%)
√	Marc Strauch, NL	25,527	(2%)
Secretary of State			
√	Ralph Munro, R*	643,622	(60%)
√	Phyllis Kenney, D	388,405	(36%)
√	Gary Gill, NL	33,571	(3%)
State Auditor			
√	Brian Sonntag, D*	603,662	(57%)
	Nina Becker, R	192,855	(18%)
√	Robert Keene Jr., R	199,721	(19%)
	Mike The Mover	66,429	(6%)
State Treasurer			
	Jack Kiley, D	156,904	(15%)
√	Mike Murphy, D	382,262	(37%)
	Randolph Bell, R	201,220	(20%)
√	Lucy DeYoung,R	288,856	(28%)

Superintendent of Public Instruction			
√	Teresa Bergeson	379,544	(38%)
	O. Jerome Brown	32,127	(3%)
	Raul de la Rosa	37,646	(4%)
	Richard Fuller	47,444	(5%)
	N. Hidden-Dodson	53,969	(5%)
	Gloria Johannessen	43,736	(4%)
	Earl LaBerge	14,540	(2%)
	Dan Leahy	68,994	(7%)
	Mae Lovern	18,019	(2%)
√	Ron Taber	174,988	(18%)
	Chris Vance	119,644	(12%)

Insurance Commissioner			
DEMOCRATS			
√	Deborah Senn, D*	571,165	(54%)
REPUBLICANS			
	Garland Connor, R	23,769	(2%)
√	Anthony Lowe, R	173,610	(16%
	Brian McCullock, R	124,513	(12%
	Steve Skipper, R	63,470	(6%)
	Dave Walker, R	77,571	(7%)
OTHER PARTIES			
√	Steve Seveick, NL	23,554	(2%)

EXHIBIT 3

Locke, three ex-governors urge no vote on 'top two" primary initiative

(http://seattlepi.nwsource.com/local/194794_primary12.html)

Tuesday, October 12, 2004

By NEIL MODIE

SEATTLE POST-INTELLIGENCER REPORTER

Opponents of Initiative 872 trotted out a bipartisan array featuring Gov. Gary Locke and three former governors yesterday in a political name-dropping battle over an effort to give Washington a Louisiana-style primary election system.

"It fundamentally will limit the choices the voters will have in the election in November" if voters pass I-872, Locke warned. The initiative, on the Nov. 2 ballot, would create a "top two," or "qualifying," primary system that sends the two highest primary vote-getters into the general election even if both belong to the same party.

Locke and former Govs. Mike Lowry and Booth Gardner, all Democrats, and John Spellman, a Republican, have sided with Democratic, Republican and Libertarian party leaders against the initiative. All but Gardner attended a Seattle news conference to denounce it.

The Yes on I-872 campaign, sponsored by the Washington State Grange, to replace the state's new, separate-party primary, also has its share of big political backers, including former Gov. Dan Evans, former Sen. Slade Gorton and Secretary of State Sam Reed, all Republicans, and Lt. Gov. Brad Owen, a Democrat.

The only living former governor not recruited by either side is Albert Rosellini, a Democrat, who had a role in a Seattle City Council campaign finance scandal that is the subject of a criminal investigation by the King County Prosecutor's Office.

Proponents expect voter resentment of the loss of the popular former "blanket primary" to help pass I-872. The blanket primary let voters cross party lines on the primary ballot. But the state Democratic, Republican and Libertarian parties sued successfully in federal court to have it declared unconstitutional.

The "top two" primary would vaguely resemble the blanket primary in allowing voters to cross party lines. But by limiting the general-election ballot to two nominees for each office, Locke said, it almost always would keep third-party candidates -- and occasionally even major-party candidates -- off the November ballot.

And it "will in no way bring back the blanket primary," Lowry said.

"It's a skewed system," Spellman said, adding, "Everyone thinks of this as a panacea. It ain't. It's worse" than either the blanket primary or the current system, which requires a voter to choose only one party's primary ballot but doesn't keep a record of which one is chosen.

State party leaders have threatened to select party nominees at party conventions if I-872 passes. Spellman said the initiative makes no provision for allowing convention-chosen nominees onto the

November ballot "unless (the parties) went to court, and that would be chaotic."

Evans, however, predicted in an interview later that if the initiative fails, the parties "will be back again to try to gain more control. They next will want to close the primaries to only those who declare themselves Republicans and Democrats" even though they deny intending to do so.

Noting Washington's tradition of political independence and moderation, Evans said, "The states that have the most closed primaries are invariably the states that pick the more liberal Democrats and the more conservative Republicans. They leave out the more productive middle, and as such I think they end up with poorer office holders and not so good government."

Spellman said he wouldn't have been elected under a "top two" system because two Democrats outpolled him in the 1980 primary even though he went on to win the general election. And in the 1996 gubernatorial primary that Locke won, he and fellow Democrat Norm Rice would have been on the November ballot if the "top two" primary had been law.

In heavily Democratic parts of Seattle or heavily Republican parts of Eastern Washington, Locke said, general-election voters would be deprived of the other party's point or view, and usually the minor parties' points of view as well.

However, a Yes on I-872 campaign worker passed out material at the opponents' news conference, noting that if Washington had a "top two" system,

four minor-party candidates in 2002 and 13 minor-party candidates in 2000 would have qualified for the general-election ballot in state legislative races.

It contradicts arguments of initiative opponents "who have irresponsibly stated that I-872 will shut out minor parties," the Yes on I-872 committee said in a prepared statement. However, in the 17 races the proponents cited, there would have been either no Republican or no Democrat on the November ballot.

"The truth is that minor party candidates have just as good of a chance of succeeding under a qualifying primary as anyone else," said Don Whiting, a former state elections supervisor and an I-872 leader.

Louisiana, with its "Cajun primary," is the only state that allows two candidates of the same party to appear on the general-election ballot. Washington's system, adopted this year, is identical to that of nine other states. Thirty-nine other states have "closed" primaries, requiring voters to publicly declare a party affiliation.

P-I reporter Neil Modie can be reached at 206-448-8321 or neilmodie@seattlepi.com

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The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al.,

Plaintiffs,

WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff Intervenors

LIBERTARIAN PARTY OF WASHINGTON STATE, et al.,

Plaintiff Intervenors

v.

DEAN LOGAN, King County Records & Elections Division Manager, et al.,

STATE OF WASHINGTON, et al.,

Defendant Intervenors

WASHINGTON STATE GRANGE,

Defendant Intervenors.

NO. 05-0927-Z

STATE'S RESPONSE TO MOTIONS OF REPUBLICAN, LIBERTARIAN, AND DEMOCRATIC PARTIES FOR SUMMARY JUDGMENT, AND STATE'S CROSS-MOTION FOR SUMMARY JUDGMENT

STATE'S MOTION TO STRIKE REPUBLICAN PARTY'S SUPPLEMENT TO MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR: WEDNESDAY, JULY 13, 2005

WITH ORAL ARGUMENT

* * *

[12]

V. ARGUMENT

A. Discussion Of Agreed Statement Of Issues

1. The primary system established by Initiative 872 does not nominate political party candidates for public office.

By enacting I-872, Washington voters separated the public process of electing candidates to public office from the private process by which political parties select their nominees. This essential change in public policy is the most basic characteristic of I-872, representing a fundamental change in the nature of primaries in Washington's electoral system. In making this change, the voters made their decision to select one of two basic approaches to conducting primary elections left open to states in the wake of *California Democratic Party v. Jones* as followed by the United States Court of Appeals for the Ninth Circuit in *Democratic Party of Washington v. Reed*. Following the results of that litigation, Washington voters could choose either to keep the Montana primary, in which the candidates appearing on the general election ballot would be determined through a party nominating primary (in which only voters selecting a particular party's ballot would be allowed to participate in selecting that party's candidates), or to adopt a new primary in which all the voters would choose among all candidates, with party nominations made irrelevant

to qualifying candidates to the ballot. The voters overwhelming selected the latter.

a. Washington's blanket primary combined voter choice with the guarantee that one candidate of each major party would advance to the general election.

As noted above, from 1935 until recently, Washington used a system known colloquially as the "blanket primary." Laws of 1935, ch. 26 (Initiative Measure to the Legislature No. 2). The blanket primary consisted of two essential features: (1) The names of all candidates, of every political party, appeared together on the primary ballot, and all

[13]

voters were permitted to select from among all candidates without any limitation based upon party affiliation of either the candidate or the voter; but (2) based on the results of the election, one candidate of each major political party (and any minor party candidates who qualified) would advance to the general election. Laws of 1935 ch. 26, § 3 (most recently codified as RCW 29A.52.130) (all properly registered voters may select among all candidates for each office); RCW 29A.36.190 (describing which candidates advanced to the general election). That is, one Democrat and one Republican (and one candidate of any other party that may have qualified as a major party at any given time) would be guaranteed a spot on the general election ballot, without regard to the relative level of support earned by each individual candidate.

In a decision applied to Washington by a subsequent Ninth Circuit opinion, the United States Supreme Court determined that states may not combine those two features, but may choose between them. *Cal. Demo.*, 530 U.S. 567. That is, states may either permit all voters to choose from among all candidates at the primary, or the state may choose to use primaries as a method of nominating candidates for public office and then place those nominees on the general election ballot. Washington's voters, through I-872, chose the first option, thereby deciding to elect their public officials without using party nominations as a means of determining which candidates will appear on the general election ballot.

The United States Supreme Court made clear the choice between these two distinctly different approaches to primaries when it struck down California's version of the blanket primary. *Id.* The Court premised its analysis upon the determination that California's blanket primary was used to select party nominees, since the primary method by which a candidate would qualify to appear on the general election ballot was by winning a party primary. *Id.* at 569-70.[10] The Court recognized that "States have a major role to play in

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[10] The other method was to qualify as an independent through a petition process. *Cal. Demo.* 530 U.S. at 569-70.

structuring and monitoring the election process, including primaries,"[11] that it is "'too plain for argument,' . . . that a State may require parties to use the primary format for selecting their nominees,

in order to assure that intraparty competition is resolved in a democratic fashion." *Id.* at 572 (quoting *Am. Party of Tex. v. White*, 415 U.S. 767, 781, 94 S. Ct. 1296, 39 L. Ed. 2d 744 (1974) (citing *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 237, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986) (Scalia, J., dissenting)). But where the process for selecting party nominees included permitting every voter to select among all candidates, as under the blanket primary, the Court found a violation of the parties' associational rights. *Cal. Demo.*, 530 U.S. at 577.

The Court then spelled out an alternative approach, which alternative Washington voters ultimately selected through I-872. The Court observed that a state could permit all voters to select from among all candidates at the primary in the following manner:

> Respondents could protect them all [referring to state interests] by resorting to a *nonpartisan* blanket primary. Generally speaking, under such a system, the State determines what qualifications it requires for a candidate to have a place on the primary ballot—which may include nomination by established [political] parties and voter-petition requirements for independent candidates. Each voter, regardless of party affiliation, may then vote for any candidate and the top two vote getters (or however many the State prescribes) then move on to the general election.

Id. at 585 (emphasis by the Court). The Court then explained, "This system has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: *Primary voters are not choosing a party's nominee.*" *Id.* at 585-86 (emphasis added).

The Ninth Circuit determined that Washington's blanket primary, like California's, was used to select political party nominees. *Wash. Demo.*, 343 F.3d at 1203-04. The Court reasoned that distinctions between California's system and Washington's were immaterial,

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[11] *Cal. Demo.*, 530 U.S. at 572 (citing *Burdick v. Takushi*, 504 U.S. 428, 433, 112 S. Ct. 2059, 119 L. Ed.2d 245 (1992), *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986)).

[15]

rejecting the argument that Washington did not use the blanket primary to select party nominees. *Id.*[12]

The gist of the holdings in *Cal. Demo.* and *Wash. Demo.* is therefore that, even though states possess broad authority over the electoral process,[13] states cannot combine two features in the same primary system. That is, they cannot simultaneously use the primary to select party nominees and permit all voters to choose from among all candidates at the primary; the states must choose one approach or the other.

b. Forced to choose between preserving voter choice and using primaries to nominate party candidates, Washington voters chose to preserve voter choice.

At the 2004 general election, Washington voters selected an approach that preserved maximum voter choice rather than interparty competition in the general election. The language of I-872 makes this choice clear in several respects. The voters, through the Initiative, explained the new and fundamentally different nature of the primary established by I-872: "A primary is a first stage in the public process by which voters elect candidates to public office." I-872, § 7(1). The voters determined that the primary would no longer constitute a mechanism for the selection of party nominees, but rather it would be transformed into a "first stage" in electing candidates for office. The voters changed the statutory definition of "primary" to reflect this fundamental shift in its purpose:

> "Primary" or "primary election" means a ((~~statutory~~)) procedure for ((~~nominating~~)) winnowing candidates ((~~to~~)) for public office ((~~at the polls~~)) to a final list of two as part of a special or general election. Each voter has the right to cast a vote for any candidate for each office without limitation based on party preference or affiliation, of either the voter or the candidate.

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[12] The Ninth Circuit noted the language in *Cal. Demo.* referring to a "nonpartisan blanket primary" in which "voters can vote for anyone on the primary ballot, and then the top vote-getters regardless of party run against each other in the general election. *Wash. Demo.* 343 F.3d at 1203. The guarantee of one place on the general election ballot for each political party is, indeed, the key distinction between a party nominating primary and a "nonpartisan blanket primary," which led the Ninth Circuit to conclude that Washington's prior system used the primary to select party nominees. *Id.*

[13] *Cal. Demo.*, 530 U.S. at 569-70.

[16]

I-872, § 5 (amending RCW 29A.04.127; deletions of prior statutory language shown in strikeout; additions of language underlined). To complete the transition away from a system in which party nominations determined access to the general election ballot, the voters also provided, "For any office for which a primary was held, only the names of the top two candidates will appear on the general election ballot". I-872, § 6(1). I-872 supplants the prior rule that the candidate receiving the highest number of votes of each party—the party nominee—would advance. I-872, § 17(4) (repealing RCW 29A.36.190).[14] The Secretary of State reiterated this point in an administrative rule that captures the understanding of the state's chief election officer as to the nature of the new primary: "Pursuant to chapter 2, Laws of 2005 [I-872], a partisan primary does not serve to determine the nominees of a political party but serves to winnow the number of candidates to a final list of two for the general election." WAC 434-262-012 (reproduced in Decl. of James K. Pharris, Ex. C).

Finally, the voters made clear their objective of promoting voter choice over party nominations, through policy statements set forth in the initiative. The initiative's intent section clearly addresses the concern of "protect[ing] each voter's right to vote for any candidate for any office." I-872, § 2. "[T]his People's Choice Initiative will become effective to implement a system that best protects the rights of voters to make such choices, increases voter participation, and advances compelling interests of the state of Washington." *Id.* Among the interests the Initiative advances was the protection of several voter rights,

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[14] I-872 was drafted before the enactment of the 2004 Legislation that resulted in the Montana Primary. Accordingly, it did not repeal RCW 29A.36.191, a provision of the 2004 Act. As the later-enacted statute, however, I-872 supersedes the earlier provision of RCW 29A.36.191. *ASARCO, Inc. v. Air Quality Coalition*, 92 Wn.2d 685, 708, 601 P.2d 501 (1979) (setting forth the standard for the implied repeal of a statute when "'(1) the later act covers the entire subject matter of the earlier legislation, is complete in itself, and is evidently intended to supersede prior legislation on the subject; or (2) the two acts are so clearly inconsistent with, and repugnant to, each other that they cannot be reconciled and both given effect by a fair and reasonable construction'").

In addition, the Voters Pamphlet statement in favor of I-872 makes clear that the elimination of a guarantee of one Democrat and one Republican on the general election ballot—of, in other words, party nominations—was one of the major objectives of the Initiative. "No political party is guaranteed a spot on the general election ballot." Statement for Initiative 872, Voters Pamphlet 12 (2004), attached as Ex. A to James K. Pharris Declaration.

[17]

including, "The right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate." I-872, § 3(3).

c. Under Initiative 872, parties choose their own nominees; the primary is not used for this purpose.

The elimination of Washington's traditional blanket primary forced Washington voters to choose between two strikingly different visions of a primary. The voters were forced to choose between voter choice and party nominations, and chose voter choice.

The Supreme Court's decision in *Cal. Demo.* made it clear that states need not structure their electoral process around party nominations and party primaries. Clearly if a state chooses to utilize a party nomination system to qualify candidates for the general election ballot, the state may require that the nominees be selected by primary as a way of assuring that intraparty disputes are resolved in a democratic manner. If the State chooses such a system, then it must respect the associational rights of the parties that such a system implicates. *Cal. Demo.*, 530 U.S. at 572. The State need not structure ballot access around party nominations, however. As an alternative, the Court offered the option that the voters selected when they enacted I-872: that the State completely decouple the process for deciding which candidates appear on the general election

ballot from any party nominating process. *Id.* at 585-86 (quoted above at p. 14).

The political parties read a requirement that is not there into this portion of the *Cal. Demo.* case. The political parties postulate that the option of a qualifying primary suggested by the Court is limited to a system in which the political parties first nominate their candidates, and then only those nominees are permitted access to the primary ballot. Republican Mot. at 12; Democratic Mot. at 16-17. Very much the contrary, the Court

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[15] The political parties also attempt to minimize the significance of this part of the Supreme Court's decision by characterizing it as dicta. The passage at issue, however, formed a key portion of the Court's substantive analysis by explaining why, in the Court's view, California's blanket primary was not narrowly tailored to the interests the state argued that it advanced. *Cal. Demo.*, 530 U.S. at 585. Even if its characterization as dicta was correct, it would not follow that lower courts should ignore this analysis. *Gen.*

[18]

states that separate party nominating processes might be used for determining candidate ballot access. It did not state that such a process was a mandatory element in a "nonpartisan" primary system. The Court used the permissive word "may" in stating that a primary "*may* include nomination by established parties". *Cal. Demo.*, 530 U.S. at 585. It seems clear that if the Court had intended to describe a mandatory requirement that it would have used mandatory, rather than permissive, language.

The political parties put much stock in the dissenting opinion of Justice Stevens in this regard, assuming that the Court's majority silently adopted an assumption that appears in a footnote to that dissent. Justice Stevens described a "nonpartisan primary" as, "a system presently used in Louisiana—in which candidates previously nominated by the various political parties and independent candidates compete." *Id.* at 598 n.8 (Stevens, J., dissenting). Their reliance upon the dissent is incorrect for several reasons. Most obviously, the description by Justice Stevens occurs in a dissent. A dissenting opinion does not speak for the Court. Further, to the extent that the dissenting opinion assumes that party nominees *would*, rather than merely *could*, be part of the system, there is no indication the Court's majority shared the assumption, since the opinion of the Court used permissive language. Next, although Justice Stevens described Louisiana's system as including a party nominating process, Louisiana law does not provide for party nominations separate from the primary. *See* La. Rev. State. Ann. § 18:461 (setting forth the manner in which candidates qualify to the primary ballot); La. Rev. State. Ann. § 18:465 (describing nominating petition). Finally, in context, Justice Stevens' argument is more of a warning against another argument that the political parties have advanced, not an embrace of their view that the opinion requires a party nominating process in order for a "top two" primary to be valid. The quoted language comes immediately after a sentence in which Justice Stevens warns against a "slippery slope"

Elec. Co. v. Joiner, 522 U.S. 136, 151 n.2, 118 S. Ct. 512, 139 L. Ed. 2d 508 (1997) (Stevens, J., concurring in part and dissenting in part).

[19]

approach to reviewing state primary systems. He warns against concluding that, "the only nominating options open for the States to choose without party consent are: (1) not to have primary elections; or (2) to have what the Court calls a 'nonpartisan primary'". *Cal. Demo.*, 530 U.S. at 598 n.8. Justice Stevens opposed the notion that the parties could simply "order up" the form of primary they prefer as if the state were a short order cook. *Id.* In context, it makes little sense to read the dissent as requiring precisely what Justice Stevens warned against—the authority of the parties to dictate the process despite the provisions of state law.

Under I-872's approach of using a "qualifying primary" rather than a "nominating primary," party nominations are irrelevant to the process of deciding which candidates appear on the general election ballot. The candidates who appear on the general election ballot are selected by the *voters at large*, not by the parties or by the voters as party members. The top two candidates, without regard to party affiliation, advance to the general election. I-872, § 6(1); *see also*, I-872, § 7. Since party affiliation plays no role in determining which candidates advance to the general election, the primary established by this Initiative cannot in any way be regarded as determining party nominees.[16]

The political parties make much of the fact that a candidate's party preference appears on the ballot, but this feature falls far short of making I-872's primary a device for selecting party nominees. The Initiative requires the declaration of candidacy form to include a space in which candidates for partisan office may "indicate his or her major or minor party preference, or independent status." I-872, § 9(3) (amending RCW 29A.24.030). Under I-872, this statement of party preference plays no role in determining which candidates

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[16] The Democratic Party suggests that candidates selected under the new top two primary will be "political party candidates" because RCW 29A.52.116 states that "[m]ajor political party candidates for all partisan elected offices . . . must be nominated at primaries held under this chapter." Democratic Mot. at 15. RCW 29A.52.116 was enacted in 2004 as a part of the Montana primary system, which clearly was a party nominating system. The quoted language is clearly inconsistent with the system established in I-872, and should be regarded as obsolete. RCW 42.17.510(1), requiring sponsors of public advertising concerning a candidate to clearly identify the candidate's political party, also dates back well before the enactment of I-872. This statute is still enforceable because it is not directly contradictory to I-872, but neither can it serve as evidence that candidates are "nominees" of political parties.

[20]

advance to the general election. The candidates with the two highest vote totals will qualify for the general election, without reference to party preference. The optional statement of political preference is provided solely to the voters as one possibly relevant piece of information about the candidate. A statement by the *candidate* as to his or

her own preferences, provided as information to the voters, does not equate with a statement that the candidate has been nominated, endorsed, or supported by any political party, and no reasonable voter would believe otherwise.

Moreover, nothing prevents political parties from nominating candidates. They may certainly do so if they choose. But what the political parties seek, and what the State need not afford them, is a right to gain a place on the general election ballot for their nominees. They can point to no authority establishing that political party nominations *must*, as opposed to merely *may*, be used to determine which candidates appear on the general election ballot. Indeed, case law clearly establishes that while political parties have a right to a reasonable opportunity for their candidates to appear on the general election ballot, they have no absolute right for them to actually do so. *Munro v. Socialist Workers Party*, 479 U.S. at 193 (states may condition general election ballot access upon a showing of a modicum of public support). "We think that the State can properly reserve the general election ballot 'for major struggles,' . . . by conditioning access to that ballot on a showing of a modicum of voter support." *Id.* at 196 (quoting *Storer v. Brown*, 415 U.S. 724, 735, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974)).

Washington's voters have clearly decided that the "major struggles" to reserve for the general election ballot are those between the two candidates garnering the strongest support, regardless of party, rather than among those candidates nominated by political parties. So long as the system provides a

reasonable opportunity to the political parties through which their candidates can enter the competition for voter support, their rights are held intact.

* * *

[24]

Assume further that the Republican Party has, by a convention or some other internal process, selected Candidate C as its preferred candidate for the office, while the Democratic Party has endorsed Candidate E. Through the internal process each party has selected, the "right to nominate" of each party has been fully satisfied. Washington law in no way limits or burdens the right of any party to use such processes. In the primary, Candidate C could be described as the "nominee" of the Republican Party and Candidate E as the "nominee" of the Democratic Party, because the parties have so declared (with no interference or involvement by the State). Party nominee status may certainly affect the politics of the campaign, but it plays no part in the way the ballot is constructed, or in the way the election is conducted.

Suppose the top two vote-getters in the primary are A and B, both Independent candidates, so that these two candidates will appear on the general election ballot. Does this situation violate the "rights" of the Republican and Democratic parties to have their "nominees" on the ballot? No, they have fully exercised their "nomination" right, and may continue to exercise their rights of free speech and freedom of assembly in the general

election, by supporting A or B or by devoting their energies to other offices.

In the alternative, suppose the top two vote-getters in the primary are C and D, both of whom have stated a party preference of "Republican." Are C and D *both* "Republican nominees" in the general election? No, unless the party chooses to make them so. The situation is precisely the same as it would be if two well-known Republicans were the finalists for a non-partisan office, such as state superintendent of public instruction or mayor of a city. The situation is politically interesting, both for Republicans and for Democrats (who have no standard bearer in such an election), but this does not make it unconstitutional.

Even if the two finalists are C and E, a Republican and a Democrat, both favored by their parties, they are the "nominees" of the parties because the parties made them so, not because they won the primary and advanced to the general election. The system is open to full participation by all parties, and all parties are legally treated exactly the same.

[25]

Thus, it is hard to imagine that a "top two" system must, as a matter of constitutional law, accommodate the asserted "right," for instance, of the Republicans in the hypothetical case above, to select Candidate C for the office in question *and to exclude Candidate D from the primary ballot, or at least to force D to choose a party preference other than Republican*. If C and D are in fact preferred by the Republican Party, do they not both have the right to say so publicly, and to have this fact published in an

open public forum such as the ballot or the voters' pamphlet? The give-and-take of the campaign provides ample opportunity for each political party to express its preference, if it chooses to do so.

The model of the nonpartisan primary shows that states need not organize their elections around party nominations. Yet, the political parties here suggest that even the faintest whiff of state recognition of the party preference of candidates triggers the parties' right to commandeer the election process and reduce the State's general election to a choice among candidates selected by the parties. None of the authorities they cite support such a view.

3. If the primary system under Initiative 872 nominates political party candidates for public office, Initiative 872 does not violate the First Amendment by compelling a political party to associate with unaffiliated voters and members of other political parties in the selection of its nominees.

The short answer to Issue No. 3, of course, is that it is based upon an incorrect premise: I-872 does not, in fact, nominate political party candidates for public office, as discussed above. However, if the Court found that the existence of a candidate's option to express a political party preference on the ballot, no matter how tangential to the operation of the election system, were sufficient to render the "top two" primary a party nomination system, that would indeed trigger a need to respect the associational interests of the political parties.[19]

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[19] It would not necessarily follow that I-872 is unconstitutional in its entirety, of course, as discussed below.

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[34]

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In this case the portions of Initiative 872 that appears to draw the most fire are Sections 7 and 9, the provisions that permit candidates to declare their "political party preference" and provide that this information will appear on the ballot. While the State believes these provisions are well within the State's constitutional authority, a "top two" primary could still be conducted even if it were found necessary to limit the extent to which some or all candidates could state their "political party preference."

The language of the Initiative itself confirms that the voters' primary purpose in enacting Initiative 872 was to allow "the broadest possible participation in the primary election" (I-872, Section 2, quoting from *Heavey v. Chapman*, 93 Wn.2d 700, 705, 611 P.2d 1256 (1980)) and to preserve the "right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation." I-872, § 3(3). If the Court were to find that some other detail of the statute causes constitutional problems, the Court should allow the State to adjust the specific problem found while maintaining the basic machinery of the "top two" primary. Any other result would force an unwanted

election system on Washington's voters beyond any constitutional necessity to do so.

* * *

The Honorable THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al., Plaintiff Intervenors LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Plaintiff Intervenors v. DEAN LOGAN, King County Records & Elections Division Manager, et al., STATE OF WASHINGTON, et al., Defendant Intervenors WASHINGTON STATE GRANGE, Defendant Intervenors.	NO. 05-0927-Z DECLARATION OF JAMES K. PHARRIS IN SUPPORT OF STATE'S RESPONSE TO MOTIONS FOR SUMMARY JUDGMENT NOTE ON MOTION CALENDAR: WEDNESDAY, JULY 13, 2005 WITH ORAL ARGUMENT

I, James K. Pharris, being first duly sworn upon oath, declare as follows:

1. I am over eighteen years of age and competent to testify. I am an attorney licensed to practice law in the state of Washington and admitted to the bar of this Court. I am currently employed as

a Senior Assistant Attorney General for the state of Washington. I am one of the counsel for Defendant-Intervenors State of Washington, Secretary of State Sam Reed, and Attorney General Rob McKenna in this action.

2. Attached to this declaration are true and correct copies of the following documents:

a. Exhibit A is a true and correct copy of the pages relating to Initiative 872 from the official Voters Pamphlet, published by the Secretary of State for the 2004 general election;

b. Exhibit B is a true and correct copy of Laws of 2004, ch. 271, as enacted by the 2004 Legislature and as partially vetoed by the Governor; and

c. Exhibit C is a true and correct copy of a Rule-Making Order, filed by the Secretary of State with the Washington State Code Reviser's Office on May 18, 2005, implementing provisions of Initiative 872.

3. I swear under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my own knowledge, and that I executed this declaration at Olympia, Washington, in the County of Thurston, this 1st day of July, 2005.

James K. Pharris

James K. Pharris

EXHIBIT A

State of Washington

Voters' Pamphlet

[cover picture]

Published by the Office of the Secretary of State

Edition 16

* * *

[10]

INITIATIVE MEASURE 872

PROPOSED TO THE PEOPLE

Official Ballot Title:

Initiative Measure 872 concerns elections for partisan offices.

This measure would allow voters to select among all candidates in a primary. Ballots would indicate candidates' party preference. The two candidates receiving most votes advance to the general election, regardless of party.

Should this measure be enacted into law?

Yes [ ] No [ ]

Note: The ballot title and explanatory statement were written by the Attorney General as required by law. The Fiscal Impact Statement was written by the Office of Financial Management. For more in-depth Office of Financial Management analysis, visit www.ofm.wa.gov/initiatives/default.htm. The complete text of Initiative Measure 872 begins on page 27.

Fiscal Impact Statement:

Summary of Fiscal Impact

Initiative 872 would authorize a primary election allowing the two candidates with the most votes to advance to the general election, regardless of

political party, starting with the primary election in September 2005. Annual costs for this primary election system could be as much as $6.0 million lower for the state and counties compared to current law. The lower cost of the primary election system is due to ballot size, the number of ballots, and associated processing procedures. One time costs for public education and voter notification of changes in the primary election system may cost the state $1.3 million.

Assumptions for Analysis of I-872

- As the State Elections Officer, the Secretary of State is projected to spend up to $1.3 million on one-time costs associated with implementing the new primary system. The most notable one-time cost is a voter outreach campaign to educate voters about changed requirements. The Secretary of State's Office is expected to spend up to $1 million to conduct a media campaign and up to $305,000 to publish an eight-page primary voter's pamphlet prior to the primary election in September that explains the primary system changes to voters. Other state one-time costs associated with implementing a new primary are as follows: developing new election processes/procedures; designing a new ballot; and training election and poll-site staff on new processes. The Secretary of State's Office estimates that they would spend up to $25,000 dollars on these activities.
- County auditors, who administer elections at the county level, are expected to save up to $6

million annually for on-going costs associated with implementation of the new primary election system. The state, which reimburses the counties for odd-year primary election costs, would share this cost savings. The current system requires either multiple ballots or a larger consolidated ballot that enables voters to either vote by party for all offices or vote only for non-partisan offices. The new primary election system reduces ballot publishing and processing costs.

The Office of the Secretary of State is not authorized to edit statements, nor is it responsible for their contents.

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INITIATIVE MEASURE 872

Explanatory Statement:

The law as it presently exists:

The process for electing candidates to federal, state and local offices involves both a primary and a general election. The primary, which is conducted in September, plays a major role in determining which candidates appear on the ballot for the following general election. The general election takes place in November, and is the voters' opportunity to select which of the candidates who appear on the general election ballot (or a write-in) should be elected to office.

The current system, described below, applies to "partisan" offices, which are offices to which candidates are elected using a party affiliation. They include United States Senator, members of Congress, most statewide elected offices (Governor, Lieutenant

Governor, Secretary of State, Treasurer, Auditor, Attorney General, Commissioner of Public Lands, and Insurance Commissioner), the state legislature, and most county offices. "Nonpartisan" offices are elected without reference to political party, and include judges (at all levels), the Superintendent of Public Instruction, offices of cities and special districts, and county offices where provided by local charter. Elections for nonpartisan offices are conducted differently from the system described below, and are not affected by the proposed initiative. Elections for President and Vice President of the United States are also not affected by the proposed initiative.

The way in which primaries are currently conducted is the product of longstanding Washington law, a recent lawsuit, and new 2004 legislation. Before it was declared unconstitutional by the courts in 2003, Washington used a system that was commonly known as the "blanket primary." Under that system, all candidates for a particular partisan office appeared together on the primary ballot, and a voter could vote for a candidate of one party for one office and a candidate of another party for a different office. The top vote getter of each major political party (currently meaning the Republicans, Democrats, and Libertarians) then advanced to the general election. Minor party and independent candidates could also advance to the general election if they received at least 1% of the votes for that office. The general election ballot, therefore, included the top candidate of each major party and some minor party or independent candidates as well.

In late 2003, a federal court ruled that the blanket primary was unconstitutional. All appeals in that case have been exhausted and the result is final. This means that a court order prohibits Washington from continuing to use the blanket primary system used in the past.

In response to this court decision, a new law was enacted in 2004 establishing a different way of conducting primaries for partisan offices. This new system applied for the first time at the September 2004 primary. Under the new system, separate primary contests are conducted for each major political party. In order to vote for partisan offices, a voter selects a primary ballot of a particular political party. Voters do not register by party and no record is made of the voters' choice. In the primary, the voter is limited to choosing among the candidates of the party whose ballot he or she selects, and may not vote for candidates affiliated with any other party. Nonpartisan offices and ballot measures appear separately, and a voter may cast votes for those offices and measures regardless of whether the voter cast votes for partisan offices.

The system adopted for use beginning in 2004 does not change the way voters participate in the general election conducted in November of each year. The general election ballot includes the candidate of each major political party who received the most votes at the primary, as well as any minor party or independent candidates who qualify through a convention and petition process. Voters are not limited to a single party at the general election. At the general election voters may choose among candidates of each major political party, as well as

any minor party or independent candidates who qualify.

The effect of the proposed measure, if it becomes law:

This measure would change the system used for conducting primaries and general elections for partisan offices. The initiative would replace the system of separate primaries for each party, as adopted and used for the first time in 2004, with a system in which all candidates for each partisan office would appear together on the primary ballot. Candidates would be permitted to express a party preference or declare themselves independents, and their preference or status would appear on the ballot. The primary ballot would include all candidates filing for the office, including both major party and minor party candidates and independents. Voters would be permitted to vote for any candidate for any office, and would not be limited to a single party.

The general election ballot would be limited to the two candidates who receive the most votes for each office at the primary, whether they are of the same or different political preference. The measure would replace existing provisions that candidates of each major political party, as well as any minor party or independent candidates who qualify, appear on the general election ballot. This measure would change the way that candidates qualify to appear on the general election ballot, but would not otherwise change the way general elections are conducted. This measure would not change the way that primaries or general elections are conducted for nonpartisan offices.

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Statement For Initiative Measure 872

VOTE FOR THE PERSON — NOT THE PARTY

Last year the state party bosses won their lawsuit against the blanket primary, and in 2004 they convinced the Governor to veto legislation allowing voters to continue to vote for any candidate in the primary. Most of us believe this freedom to select any candidate in the primary is a basic right. Don't be forced to choose from only one party's slate of candidates in the primary. *Vote Yes on I-872.*

MORE COMPETITIVE PRIMARIES AND GENERAL ELECTIONS

Under I-872, the two candidates with the most votes in the primary win and go on to the general election ballot. No political party is guaranteed a spot on the general election ballot. Parties will have to recruit candidates with broad public support and run campaigns that appeal to all the voters. That's fair – and that's right.

PROTECT PRIVACY AND INCREASE PARTICIPATION

Under I-872, you will never have to declare party or register by party in order to vote in the primary. In the primaries in 2000, the turnout in Washington was *more than twice as high* as in states with party primaries – because voters in this state could support any candidate on the primary ballot. *Vote Yes on I-872.*

RETURN CONTROL OF THE PRIMARY TO THE VOTERS

The September primary this year gave the state party bosses more control over who appears on our general election ballot at the expense of the average voter. I-872 will restore the kind of choice in the primary that voters enjoyed for seventy years with the blanket primary. Protect Washington's tradition as a state that elects people over party labels. *Vote Yes on I-872.*

For more information, call 1.800.854.1635 or visit www.i872.org .

Rebuttal of Statement Against

I-872 gives voters *more choices* in the primary and *better choices* in the general. *All the voters* will decide who is on the November ballot. Whether it's one Republican and one Democrat, one major and one minor party, or even an Independent — they will be *the candidates the voters want the most.* The primary and general election should be decided by voters, not by exclusive party organizations that might be dominated by special interests!

Voters' Pamphlet Argument Prepared by:

TERRY HUNT, President, Washington State Grange; BILL FINKBEINER, State Senator, Republican; BRIAN HATFIELD, State Representative, Democrat; SAM REED, Secretary of State, Republican; JOHN STANTON, Chairman and CEO, Western Wireless; DARLENE FAIRLEY, State Senator, Democrat.

Statement Against Initiative Measure 872

I-872 REDUCES YOUR ELECTION CHOICES THE LEAGUE OF WOMEN VOTERS AND OTHER CONCERNED CITIZENS URGE YOU TO MAKE SURE WASHINGTON VOTERS HAVE CHOICES IN NOVEMBER

Vote No on I-872! Don't be fooled. I-872 creates a Louisiana-style primary that would sharply reduce your choices in general elections. Over a third of the statewide and congressional candidates who appeared on the general election ballot in 2000 would have been eliminated in the primary if I-872 had been the law.

Third Parties and Independents Eliminated: If I-872 is passed, third parties, minor parties and even independents will be eliminated from the general election ballot, leaving (in most cases) one Republican and one Democrat. In November 2000, 180,000 voters who voted for third party candidates in the general election would never have had that choice if I-872 had been the law. Insulating the top two political parties from competition is a bad idea.

Single-Party Elections Will Result: Under I-872 many voters will not be able to vote for a candidate that represents their philosophy because the two top vote-getters in a race may be of the same party resulting in only one party being represented on the November ballot. In one-third of the races for Governor in the last twenty-five years, I-872 would have resulted in two general election gubernatorial candidates from the same party. In fact, the voters'

ultimate choice for Governor in 1980, John Spellman, would never have appeared on the November ballot.

We urge you to preserve Washington's independent, multi-partisan election system by voting No on I-872.

For more information, call 206.652.8904 or visit www.No872.org .

Rebuttal of Statement For

The League of Women Voters and many others believe I-872 is bad for Washington. I-872 does not"restore the kind of choice" voters had in the past. *It reduces everybody's choice in the general election.*

It decreases general election ballot diversity by eliminating third party candidates and independents. Some November ballots may have choices from only one party for an office.

Support good government and general election choices. *Vote No on I-872.*

Voters' Pamphlet Argument Prepared by:

JUDY GOLBERG, Chair, President of Washington League of Women Voters; GARY LOCKE, Governor of the State of Washington, Democrat; KEN EIKENBERRY, former Washington Attorney General, past State Republican Chair; JOCELYN LANGLOIS, acting Chair, Libertarian Party of Washington State; JODY GRAGE HAUG, Membership Chair, Green Party of Washington; JOAN THOMAS, past President Seattle LWV, past President Washington LWV.

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Complete Text of

INITIATIVE MEASURE NO. 872

AN ACT Relating to elections and primaries; amending RCW 29A.04.127, 29A.36.170, 29A.04.310, 29A.24.030, 29A.24.210, 29A.36.010, 29A.52.010, 29A.80.010, and 42.12.040; adding a new section to chapter 29A.04 RCW; adding a new section to chapter 29A.52 RCW; adding a new section to chapter 29A.32 RCW; creating new sections; repealing RCW 29A.04.157, 29A.28.010, 29A.28.020, and 29A.36.190; and providing for contingent effect.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

TITLE

NEW SECTION. Sec. 1. This act may be known and cited as the People's Choice Initiative of 2004.

LEGISLATIVE INTENT: PROTECTING VOTERS' RIGHTS AND CHOICE

NEW SECTION. Sec. 2. The Washington Constitution and laws protect each voter's right to vote for any candidate for any office. The Washington State Supreme Court has upheld the blanket primary as protecting compelling state interests "allowing each voter to keep party

identification, if any, secret; allowing the broadest possible participation in the primary election; and giving each voter a free choice among all candidates in the primary." *Heavey v. Chapman*, 93 Wn.2d 700, 705, 611 P.2d 1256 (1980). The Ninth Circuit Court of Appeals has threatened this system through a decision, that, if not overturned by the United States Supreme Court, may require change. In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective to implement a system that best protects the rights of voters to make such choices, increases voter participation, and advances compelling interests of the state of Washington.

WASHINGTON VOTERS' RIGHTS

NEW SECTION. Sec. 3. The rights of Washington voters are protected by its Constitution and laws and include the following fundamental rights:

(1) The right of qualified voters to vote at all elections;

(2) The right of absolute secrecy of the vote. No voter may be required to disclose political faith or adherence in order to vote;

(3) The right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate.

DEFINITIONS

NEW SECTION. Sec. 4. A new section is added to chapter 29A.04 RCW to read as follows:

"Partisan office" means a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name. The following are partisan offices:

(1) United States senator and United States representative;

(2) All state offices, including legislative, except (a) judicial offices and (b) the office of superintendent of public instruction;

(3) All county offices except (a) judicial offices and (b) those offices for which a county home rule charter provides otherwise.

Sec. 5. RCW 29A.04.127 and 2003 c 111 s 122 are each amended to read as follows:

"Primary" or "primary election" means a ((~~statutory~~)) procedure for ((~~nominating~~)) winnowing candidates ((~~to~~)) for public office ((~~at the polls~~)) to a final list of two as part of a special or general election. Each voter has the right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate.

Sec. 6. RCW 29A.36.170 and 2003 c 111 s 917 are each amended to read as follows:

(1) ((~~Except as provided in RCW 29A.36.180 and in subsection (2) of this section, on the ballot at the general election for a nonpartisan~~)) For any office for which a primary was held, only the names of the top two candidates will appear on the general election ballot; the name((s)) of the candidate who

received the greatest number of votes will appear first and the candidate who received the next greatest number of votes ((~~for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted,~~)) will appear second. No candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary, if a primary was conducted. On the ballot at the general election for ((~~any other nonpartisan~~)) an office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW 29A.36.130.

(2) ((~~On the ballot at the general election~~)) For the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed ((~~under the title of the office~~)) for that position on the ballot at the general election.

NEW SECTION. Sec. 7. A new section is added to chapter 29A.52 RCW to read as follows:

(1) A primary is a first stage in the public process by which voters elect candidates to public office.

(2) Whenever candidates for a partisan office are to be elected, the general election must be preceded by a primary conducted under this chapter. Based upon votes cast at the primary, the top two candidates will be certified as qualified to appear on

the general election ballot, unless only one candidate qualifies as provided in RCW 29A.36.170.

(3) For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots by appropriate abbreviation as set forth in rules of the secretary of state. A candidate may express no party or independent preference. Any party or independent preferences are shown for the information of voters only and may in no way limit the options available to voters.

CONFORMING AMENDMENTS

Sec. 8. RCW 29A.04.310 and 2003 c 111 s 143 are each amended to read as follows:

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((~~Nominating~~)) Primaries for general elections to be held in November must be held on:

(1) The third Tuesday of the preceding September; or ((~~on~~))

(2) The seventh Tuesday immediately preceding ((~~such~~)) that general election, whichever occurs first.

Sec. 9. RCW 29A.24.030 and 2003 c 111 s 603 are each amended to read as follows:

A candidate who desires to have his or her

name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) For partisan offices only, a place for the candidate to indicate ((~~a~~)) his or her major or minor party ((~~designation, if applicable~~)) preference, or independent status;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under RCW 29A.24.090;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed

electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29A.24.090.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process.

Sec. 10. RCW 29A.24.210 and 2003 c 111 s 621 are each amended to read as follows:

Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the sixth Tuesday prior to ((~~a primary~~)) an election, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any ((~~such~~)) special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by ((~~such~~)) any other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the primary or general election ballot as if filed during the regular filing period.

The procedures for filings for partisan offices

where a vacancy occurs under this section or a void in candidacy occurs under RCW 29A.24.140 must be substantially similar to the procedures for nonpartisan offices under RCW 29A.24.150 through 29A.24.170.

NEW SECTION. Sec. 11. A new section is added to chapter 29A.32 RCW to read as follows:

The voters' pamphlet must also contain the political party preference or independent status where a candidate appearing on the ballot has expressed such a preference on his or her declaration of candidacy.

Sec. 12. RCW 29A.36.010 and 2003 c 111 s 901 are each amended to read as follows:

On or before the day following the last day allowed for ((~~political parties to fill vacancies in the ticket as provided by RCW 29A.28.010~~)) candidates to withdraw under RCW 29A.24.130, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party ((~~designation, if any~~)) preference or independent designation as shown on filed declarations.

Sec. 13. RCW 29A.52.010 and 2003 c 111 s 1301 are each amended to read as follows:

Whenever it shall be necessary to hold a special election in an odd-numbered year to fill an unexpired term of any office which is scheduled to be voted upon for a full term in an even-numbered year, no ((~~September~~)) primary election shall be held in

the odd-numbered year if, after the last day allowed for candidates to withdraw, ((~~either of the following circumstances exist:~~

~~(1) No more than one candidate of each qualified political party~~

~~has filed a declaration of candidacy for the same partisan office to be filled; or~~

~~(2)~~))) no more than two candidates have filed a declaration of candidacy for a single ((~~nonpartisan~~)) office to be filled.

In ((~~either~~)) this event, the officer with whom the declarations of candidacy were filed shall immediately notify all candidates concerned and the names of the candidates that would have been printed upon the ((~~September~~)) primary ballot, but for the provisions of this section, shall be printed as ((~~nominees~~)) candidates for the positions sought upon the ((~~November~~)) general election ballot.

Sec. 14. RCW 29A.80.010 and 2003 c 111 s 2001 are each amended to read as follows:

(((~~(1)~~))) Each political party organization may((~~:~~

~~(a) Make its own~~)) adopt rules ((~~and regulations; and~~

~~(b) Perform all functions inherent in such an organization.~~

~~(2) Only major political parties may designate candidates to appear on the state primary ballot as provided in RCW 29A.28.010~~)) governing its own organization and the nonstatutory functions of that organization.

Sec. 15. RCW 42.12.040 and 2003 c 238 s 4 are each amended to read as follows:

(1) If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the sixth Tuesday prior to the ((~~primary for the~~)) next general election following the occurrence

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of the vacancy, a successor shall be elected to that office at that general election. Except during the last year of the term of office, if such a vacancy occurs on or after the sixth Tuesday prior to the ((~~primary for that~~)) general election, the election of the successor shall occur at the next succeeding general election. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county ((~~which~~)) that has charter provisions inconsistent with this section.

(2) If a vacancy occurs in any legislative office or in any partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW ((~~29.01.135~~)) 29A.04.133 and shall continue through the term for which he or she was elected.

CODIFICATION AND REPEALS

NEW SECTION. Sec. 16. The code reviser shall revise the caption of any section of Title 29A RCW as needed to reflect changes made through this Initiative.

NEW SECTION. Sec. 17. The following acts or parts of acts are each repealed:

(1) RCW 29A.04.157 (September primary) and 2003 c 111 s 128;

(2) RCW 29A.28.010 (Major party ticket) and 2003 c 111 s 701, 1990 c 59 s 102, 1977 ex.s. c 329 s 12, & 1965 c 9 s 29.18.150;

(3) RCW 29A.28.020 (Death or disqualification--Correcting ballots--Counting votes already cast) and 2003 c 111 s 702, 2001 c 46 s 4, & 1977 ex.s. c 329 s 13; and

(4) RCW 29A.36.190 (Partisan candidates qualified for general election) and 2003 c 111 s 919.

NEW SECTION. Sec. 18. This act takes effect only if the Ninth Circuit Court of Appeals' decision in *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003) holding the blanket primary election system in Washington state invalid becomes final and a Final Judgment is entered to that effect.

Complete Text of

INITIATIVE MEASURE NO. 884

AN ACT Relating to education' amending RCW 28A.505.210, 82.14.410, 84.52.068, 28B.119.010, 43.09.050, 82.08.020, 82.12.045, and

67.28.181; reenacting and amending RCW 43.79A.040; adding new sections to chapter 28A.215 RCW; adding a new section to 82.12 RCW; adding a new chapter to Title 28A RCW; adding a new chapter to Title 28B RCW; adding a new chapter to Title 43 RCW; creating new sections; repealing RCW 28A.215.100, 28A.215.110, 28A.215.120, 28A.215.130, 28A.215.140, 28A.215.150, 28A.215.160, 28A, 28A.215.170, 28A.215.180, 28A.215.190, 28A.215.200, 28A.215.900, 28A.215.904, 28A.215.906, and 28A.215.908; and providing and effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1 FINDINGS. The people of the state of Washington find that:

(1) To compete successfully in the 21st century economy, Washington's citizens must be equipped with the best education and skills in the nation. Education today requires a seamless, integrated, and connected approach to learning, from early childhood to higher education and beyond.

(2) We are demanding more than ever from students and teachers, but our political leaders have ignored the will of the people and have failed to make the investments called for to meet these demands. The state has fallen behind the nation in funding per student at a time when we have committed ourselves to higher standards for all children.

(3) Too many of this state's kindergartners are not ready for school. Too many children do not read

at grade level. Too many children do not graduate from high school. Too many college students need remedial classes and too many leave without degrees.

(4) Thousands of eligible low-income children are denied preschool opportunities that would better prepare them for school. Our students sit in the fourth most crowded classrooms in the nation. The state's colleges and universities cannot accommodate tens of thousands of students expected to graduate from high school in the next few years.

(5) To create the best-prepared work force in the country, to fuel the state's economic development, and to strengthen civic participation of the next generation, we must invest more in early childhood education, K-12, and postsecondary education.

(6) Any new funds raised to improve education must be protected and used only for that purpose.

NEW SECTION. Sec. 2 INTENT. (1) It is the intent of the people to create a dedicated education trust fund that will enhance current education funding and make the additional investments needed to help students meet the educational and economic challenges of our time. The education trust fund will operate on three core principles:

(a) **STRATEGIC, TARGETED INVESTMENT.** The education trust fund makes carefully targeted investments to help teachers have the greatest impact on their students and to help

families make the greatest gains in access to education and opportunity.

The above text is an exact reproduction as submitted by the Sponsor. The Office of the Secretary of State has no editorial authority.

EXHIBIT B

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6543

Chapter 271, Laws of 2004

(partial veto)

58th Legislature
2004 Regular Session

PRIMARY ELECTIONS

EFFECTIVE DATE: 4/1/04 - Except sections 102 through 193, which become effective 6/10/04.

Passed by the Senate
March 10, 2004

YEAS 36 NAYS 12

BRAD OWEN
President of the Senate

Passed by the House
March 8, 2004

YEAS 51 NAYS 46

FRANK CHOPP
Speaker of the House of Representatives

Approved April 1, 2004, with the exception of sections 1 through 57; 101; and 201, which are vetoed.

GARY F. LOCKE
Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SENATE BILL 6453 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.
Secretary

FILED

April 1, 2004 - 10:25 a.m.

Secretary of State
State of Washington

ENGROSSED SENATE BILL 6453

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature
2004 Regular Session

By Senators Roach, Hargrove, Hale, T. Sheldon, Schmidt, Winsley, McCaslin, Carlson, Fairley and Rasmussen; by request of Secretary of State

Read first time 01/21/2004. Referred to Committee on Government Operations & Elections.

AN ACT Relating to a qualifying primary; amending RCW 29A.04.085, 29A.04.127, 29A.04.310, 29A.20.020, 29A.20.120, 29A.20.140, 29A.20.150, 29A.20.160, 29A.20.170, 29A.20.180, 29A.20.190, 29A.24.030, 29A.24.080, 29A.24.090, 29A.24.100, 29A.24.110, 29A.24.140, 29A.24.150, 29A.24.160, 29A.24.170, 29A.24.180, 29A.24.190, 29A.24.310, 29A.28.040, 29A.28.060, 29A.32.030, 29A.36.010, 29A.36.070, 29A.36.100, 29A.36.170, 29A.36.200, 29A.52.010, 29A.52.110, 29A.52.230, 29A.52.320, 29A.52.350, 29A.60.020, 29A.60.220, 29A.64.010, 29A.64.020, 29A.64.040, 29A.64.060, 29A.64.080, 29A.68.010, 29A.80.010, 29A.84.260, 29A.84.310, 29A.84.710, and 42.17.020; reenacting and amending RCW 29A.32.120; adding new sections to chapter 29A.52 RCW; adding new sections to chapter 29A.04 RCW; adding new sections to chapter 29A.28 RCW; adding new sections to chapter 29A.08 RCW; adding a new section to chapter 29A.12 RCW; adding new sections to chapter 29A.20 RCW; adding new sections

to chapter 29A.24 RCW; adding new sections to chapter 29A.32 RCW; adding new sections to chapter 29A.36 RCW; adding new sections to chapter 29A.40 RCW; adding new sections to chapter 29A.44 RCW; adding new sections to chapter 29A.60 RCW; adding new sections to chapter 29A.80 RCW; adding new sections to chapter 29A.64 RCW; adding a new section to chapter 29A.68 RCW; adding new sections to chapter 29A.84 RCW; creating new sections; repealing RCW 29A.04.157, 29A.20.110, 29A.20.130, 29A.20.200, 29A.24.200, 29A.24.210, 29A.28.010, 29A.28.020, 29A.36.190, 29A.52.130, 29A.04.903, 29A.04.007, 29A.04.085, 29A.04.127, 29A.04.215, 29A.04.310, 29A.04.320, 29A.04.610, 29A.12.100, 29A.20.020, 29A.20.120, 29A.20.140, 29A.20.150, 29A.20.160, 29A.20.170, 29A.20.180, 29A.20.190, 29A.24.030, 29A.24.080, 29A.24.090, 29A.24.100, 29A.24.110, 29A.24.130, 29A.24.140, 29A.24.150, 29A.24.160, 29A.24.170, 29A.24.180, 29A.24.190, 29A.24.310, 29A.28.040, 29A.28.060, 29A.28.070, 29A.32.030, 29A.32.120, 29A.32.240, 29A.36.010, 29A.36.070, 29A.36.100, 29A.36.110, 29A.36.120, 29A.36.130, 29A.36.140, 29A.36.150, 29A.36.160, 29A.36.170, 29A.36.200, 29A.40.060, 29A.40.090, 29A.44.200, 29A.44.220, 29A.44.230, 29A.52.010, 29A.52.110, 29A.52.120, 29A.52.230, 29A.52.310, 29A.52.320, 29A.52.350, 29A.60.020, 29A.60.220, 29A.64.010, 29A.64.020, 29A.64.040, 29A.64.060, 29A.64.080, 29A.68.010, 29A.80.010, 29A.80.040, 29A.80.050, 29A.80.060, 29A.84.260, 29A.84.310, and 29A.84.710; prescribing penalties; providing a contingent effective date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART 1 - QUALIFYING PRIMARY

***NEW SECTION.** Sec. 1. A new section is added to chapter 29A.52 RCW to read as follows:

(1) This act may be known and cited as the Qualifying Primary Act.

(2) The purpose of any primary held in this state is to qualify candidates to appear on the general election ballot. Primary elections do not function as a procedure to determine the nominees of political parties. The sole purpose of allowing candidates to identify a political party preference is to provide to voters a brief description of each candidate's political philosophy, which the voters may consider when casting their votes at a primary or general election. In a primary election, each voter, regardless of party affiliation, may vote for any candidate listed on the ballot, and the two candidates who receive the most votes, also known as the top two vote getters, and who receive at least one percent of the total votes cast for that office, advance to the general election. Primary election voters are not choosing a party's nominee. A qualifying primary ensures more choice, greater participation, increased privacy, and a sense of fairness for the voters.

(3) The provisions of this title relating to primaries must be liberally construed to further the following interests:

(a) The legislature finds that the process of determining which candidates will appear on the general election ballot or be elected to office is a

public process, in which all voters must be permitted to participate. The legislature further finds that it is not in the public interest to expend public funds on an election procedure that limits the rights of voters by restricting their ability to participate based on the party affiliation, if any, of the voters or the candidates, or that requires voters to publicly declare an affiliation with a political party;

(b) All qualified registered voters of the state of Washington should be permitted to participate in all meaningful stages of the process for qualifying candidates to appear on the general election ballot by voting for the candidates of their choice in the districts and jurisdictions where they are eligible to vote; and

(c) No registered voter of the state of Washington should be required to divulge to any public or private entity his or her party affiliation, if any, as a prerequisite to voting.

**Sec. 1 was vetoed. See message at end of chapter.*

***NEW SECTION.** Sec. 2. The rights of Washington voters are protected by its Constitution and laws and include the following fundamental rights:

(1) The right of qualified voters to vote at all elections;

(2) The right of absolute secrecy of the vote. No voter may be required to disclose political faith or adherence in order to vote;

(3) The right to cast a vote for any candidate for each office without any limitation based on party

preference or affiliation, of either the voter or the candidate.

**Sec. 2 was vetoed. See message at end of chapter.*

*Sec. 3. RCW 29A.04.085 and 2003 c 111 s 115 are each amended to read as follows:

"Major political party" means a political party ((of which at least one nominee for president, vice president, United States senator, or a statewide office received at least five percent of the total vote cast at the last preceding state general election in an even-numbered year. A political party qualifying as a major political party under this section retains such status until the next even-year election at which a candidate of that party does not achieve at least five percent of the vote for one of the previously specified offices. If none of these offices appear on the ballot in an even-year general election, the major party retains its status as a major party through that election)) identified on the declaration of candidacy of at least one candidate for statewide office who received at least five percent of the total votes cast for that office at the last primary or general election in a year that the office of governor appeared on the ballot. Once qualified, a major political party retains such status until the next primary or general election in a year that the office of governor appears on the ballot.

**Sec. 3 was vetoed. See message at end of chapter.*

***NEW SECTION.** Sec. 4. A new section is added to chapter 29A.04 RCW to read as follows:

"Partisan office" means an office for which a candidate may identify a political philosophy under

RCW 29A.24.030(3), and is limited to the following offices:

(1) United States senator and representative;

(2) All state offices except (a) judicial offices and (b) the office of superintendent of public instruction;

(3) All county offices except (a) judicial offices and (b) those offices where a county home rule charter provides otherwise.

**Sec. 4 was vetoed. See message at end of chapter.*

*Sec. 5. RCW 29A.04.127 and 2003 c 111 s 122 are each amended to read as follows:

"Primary" ((or "primary election")) means a statutory qualifying procedure ((for nominating candidates to public office at the polls)) in which each registered voter eligible to vote in the district or jurisdiction is permitted to cast a vote for his or her preferred candidate for each office appearing on the ballot, without any limitation based on party preference or affiliation on the part of the voter or the candidate, with the result that not more than two candidates for each office qualify to appear on the general election ballot.

**Sec. 5 was vetoed. See message at end of chapter.*

*Sec. 6. RCW 29A.04.310 and 2003 c 111 s 143 are each amended to read as follows:

((Nominating)) Qualifying primaries for general elections to be held in November must be held on the third Tuesday of the preceding September or on the seventh Tuesday immediately preceding such general election, whichever occurs first.

Sec. 6 was vetoed. See message at end of chapter.

*Sec. 7. RCW 29A.20.020 and 2003 c 111 s 502 are each amended to read as follows:

(1) A person filing a declaration of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office shall not appear on a ballot for that office unless, except as provided in RCW 3.46.067 and 3.50.057, the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be ((nominated)) qualified from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(4) ((This section does not apply to the office of a member of the United States Congress.)) The requirements of voter registration and residence within the geographic area of a district do not apply to candidates for congressional office. Qualifications for United States Congress are specified in the United States Constitution.

Sec. 7 was vetoed. See message at end of chapter.

*Sec. 8. RCW 29A.20.120 and 2003 c 111 s 506 are each amended to read as follows:

(((1) Any nomination of a candidate for partisan public office by other than a major political party may be made only: (a) In a convention held not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29A.28.040; (b) as provided by RCW 29A.60.020; or (c) as otherwise provided in this section.

(2))) Nominations of candidates for president and vice president of the United States other than by a major political party ((may)) must be made ((either at a convention conducted under subsection (1) of this section, or)) at a ((similar)) convention ((taking place)) to be held not earlier than the first Sunday in July and not later than seventy days before the general election. ((Conventions held during this time period may not nominate candidates for any public office other than president and vice president of the United States, except as provided in subsection (3) of this section.

(3) If a special filing period for a partisan office is opened under RCW 29A.24.210, candidates of minor political parties and independent candidates may file for office during that special filing period. The names of those candidates may not appear on the ballot unless they are nominated by convention held no later than five days after the close of the special filing period and a certificate of nomination is filed with the filing officer no later than three days after the convention. The requirements of RCW 29A.20.130 do not apply to such a convention. If primary ballots or a voters' pamphlet are ordered to be printed before the deadline for submitting the certificate of nomination and the certificate has not been filed, then the candidate's name will be included but may not appear on the general election ballot unless the certificate is timely filed and the candidate otherwise qualifies to appear on that ballot.

(4) A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice president, United States senator, or a statewide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by RCW 29A.20.140. For all other offices for which nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention.))

Sec. 8 was vetoed. See message at end of chapter.

*Sec. 9. RCW 29A.20.140 and 2003 c 111 s 508 are each amended to read as follows:

(((1) To be valid, a convention must be attended by at least twenty-five registered voters.

(2))) In order to nominate candidates for the offices of president and vice president of the United States, ((United States senator, or any statewide office,)) a nominating convention shall obtain and submit to the filing officer the signatures of at least two hundred registered voters of the state of Washington. ((In order to nominate candidates for any other office, a nominating convention shall obtain and submit to the filing officer the signatures of twenty-five persons who are registered to vote in the jurisdiction of the office for which the nominations are made.))

Sec. 9 was vetoed. See message at end of chapter.

*Sec. 10. RCW 29A.20.150 and 2003 c 111 s 509 are each amended to read as follows:

A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate ((convention as it appears on the certificate of nomination as required by RCW 29A.20.160(3))). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. ((No person may sign more than one nominating petition under this chapter for an office for a primary or election.)) The nominating petition

must be submitted to the secretary of state not later than ten days after adjournment of the convention.

**Sec. 10 was vetoed. See message at end of chapter.*

*Sec. 11. RCW 29A.20.160 and 2003 c 111 s 510 are each amended to read as follows:

A certificate evidencing nominations of candidates for the offices of president and vice president made at a convention must:

(1) Be in writing;

(2) Contain the name of each person nominated ((, his or her residence, and the office for which he or she is named, and if the nomination is)) for the offices of president and vice president of the United States, their addresses, and a sworn statement from both nominees giving their consent to the nomination;

(3) Identify the minor political party or the independent candidate on whose behalf the convention was held;

(4) Be verified by the oath of the presiding officer and secretary;

(5) Be accompanied by a nominating petition or petitions bearing the signatures and addresses of registered voters equal in number to that required by RCW 29A.20.140;

(6) Contain proof of publication of the notice of calling the convention; and

(7) Be submitted to the ((appropriate filing officer)) secretary of state not later than one week following the adjournment of the convention at which the nominations were made. ((If the nominations are

made only for offices whose jurisdiction is entirely within one county, the certificate and nominating petitions must be filed with the county auditor. If a minor party or independent candidate convention nominates any candidates for offices whose jurisdiction encompasses more than one county, all nominating petitions and the convention certificates must be filed with the secretary of state.))

**Sec. 11 was vetoed. See message at end of chapter.*

*Sec. 12. RCW 29A.20.170 and 2003 c 111 s 511 are each amended to read as follows:

(1) If two or more valid certificates of nomination are filed purporting to nominate different candidates for ((the same position)) president and vice president using the same party name, the filing officer must give effect to both certificates. If conflicting claims to the party name are not resolved either by mutual agreement or by a judicial determination of the right to the name, the candidates must be treated as independent candidates. Disputes over the right to the name must not be permitted to delay the printing of either ballots or a voters' pamphlet. ((Other candidates nominated by the same conventions may continue to use the partisan affiliation unless a court of competent jurisdiction directs otherwise.))

(2) A person affected may petition the superior court of the county in which the filing officer is located for a judicial determination of the right to the name of a minor political party, either before or after documents are filed with the filing officer. The court shall resolve the conflict between competing claims to the use of the same party name according to the

following principles: (a) The prior established public use of the name during previous elections by a party composed of or led by the same individuals or individuals in documented succession; (b) prior established public use of the name earlier in the same election cycle; (c) ((the nomination of a more complete slate of candidates for a number of offices or in a number of different regions of the state; (d))) documented affiliation with a national or statewide party organization with an established use of the name; (((e))) (d) the first date of filing of a certificate of nomination; and (((f))) (e) such other indicia of an established right to use of the name as the court may deem relevant. ((If more than one filing officer is involved, and one of them is the secretary of state, the petition must be filed in the superior court for Thurston county.)) Upon resolving the conflict between competing claims, the court may also address any ballot designation for the candidate who does not prevail.

**Sec. 12 was vetoed. See message at end of chapter.*

*Sec. 13. RCW 29A.20.180 and 2003 c 111 s 512 are each amended to read as follows:

A minor political party or independent candidate convention nominating candidates for the offices of president and vice president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of the persons selected and shall be verified by the ((presiding officer of the convention)) candidates named on the nominating petition.

Sec. 13 was vetoed. See message at end of chapter.

*Sec. 14. RCW 29A.20.190 and 2003 c 111 s 513 are each amended to read as follows:

Upon the receipt of the ((certificate of nomination)) nominating petition, the ((officer with whom it is filed shall check the certificate and)) secretary of state shall canvass the signatures ((on the accompanying nominating petitions to determine if the requirements of RCW 29A.20.140 have been met)). Once the determination of the sufficiency of the petitions has been made, the filing officer shall notify the ((presiding officer of the convention)) candidates and any other persons requesting the notification ((, of his or her decision regarding the sufficiency of the certificate or the nominating petitions)). Any appeal regarding the filing officer's determination must be filed with the superior court of the county in which the certificate or petitions were filed not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying.

Sec. 14 was vetoed. See message at end of chapter.

*Sec. 15. RCW 29A.24.030 and 2003 c 111 s 603 are each amended to read as follows:

A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a

declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) For those offices defined in section 4 of this act only, a place for the candidate to ((indicate a party designation, if applicable)) identify a major or minor political party, if any, the candidate regards as best approximating his or her own political philosophy. No candidate may list more than one political party. Nothing in this indication of political philosophy may be construed as denoting an endorsement or nomination by that party. The sole purpose of allowing candidates to identify a political party preference is to provide to voters a brief description of each candidate's political philosophy, which the voters may consider when casting their votes at a primary or general election;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a ((nominating)) petition in lieu of the filing fee under RCW 29A.24.090;

(5) A place for the candidate to sign the declaration of candidacy, stating that the

information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29A.24.090.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process.

**Sec. 15 was vetoed. See message at end of chapter.*

*Sec. 16. RCW 29A.24.080 and 2003 c 111 s 608 are each amended to read as follows:

Any candidate may mail his or her declaration of candidacy for an office to the filing officer. Such declarations of candidacy shall be processed by the filing officer in the following manner:

(1) Any declaration received by the filing officer by mail before the tenth business day immediately preceding the first day for candidates to file for office shall be returned to the candidate submitting it, together with a notification that the declaration of candidacy was received too early to be processed. The candidate shall then be permitted to resubmit his or her declaration of candidacy during the filing period.

(2) Any properly executed declaration of candidacy received by mail on or after the tenth business day immediately preceding the first day for candidates to file for office and before the close of business on the last day of the filing period shall be included with filings made in person during the filing period. In primaries for partisan office and judicial ((elections)) offices the filing officer shall determine by lot the order in which the names of those candidates shall appear upon sample and absentee primary ballots.

(3) Any declaration of candidacy received by the filing officer after the close of business on the last day for candidates to file for office shall be rejected and returned to the candidate attempting to file it.

**Sec. 16 was vetoed. See message at end of chapter.*

*Sec. 17. RCW 29A.24.090 and 2003 c 111 s 609 are each amended to read as follows:

A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her

declaration of candidacy a ((nominating)) filing petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury.

**Sec. 17 was vetoed. See message at end of chapter.*

*Sec. 18. RCW 29A.24.100 and 2003 c 111 s 610 are each amended to read as follows:

The ((nominating)) filing petition authorized by RCW 29A.24.090 shall be printed on sheets of uniform color and size, shall contain no more than twenty numbered lines, and must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

We, the undersigned registered voters of . . .(the state of Washington or the political subdivision for which the ((nomination)) filing is made). . ., hereby petition that the name of . . . (candidate's name). . . be printed on the official primary ballot for the office of . . .(insert name of office). . ..

If the candidate listed a political party on the declaration of candidacy, then the name of that party must appear on the filing petition.

The petition must include a place for each individual to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

**Sec. 18 was vetoed. See message at end of chapter.*

*Sec. 19. RCW 29A.24.110 and 2003 c 111 s 611 are each amended to read as follows:

((Nominating)) Petitions may be rejected for the following reasons:

(1) The petition is not in the proper form;

(2) The petition clearly bears insufficient signatures;

(3) The petition is not accompanied by a declaration of candidacy;

(4) The time within which the petition and the declaration of candidacy could have been filed has expired.

If the petition is accepted, the officer with whom it is filed shall canvass the signatures contained on it and shall reject the signatures of those persons who are not registered voters and the signatures of those persons who are not registered to vote within the jurisdiction of the office for which the ((nominating)) petition is filed. He or she shall additionally reject any signature that appears on the ((nominating)) petitions of two or more candidates for the same office and shall also reject, each time it

appears, the name of any person who signs the same petition more than once.

If the officer with whom the petition is filed refuses to accept the petition or refuses to certify the petition as bearing sufficient valid signatures, the person filing the petition may appeal that action to the superior court. The application for judicial review shall take precedence over other cases and matters and shall be speedily heard and determined.

**Sec. 19 was vetoed. See message at end of chapter.*

*Sec. 20. RCW 29A.24.140 and 2003 c 111 s 614 are each amended to read as follows:

A void in candidacy for ((a nonpartisan)) an office occurs when an election for such office, except for the short term, has been scheduled and no valid declaration of candidacy has been filed for the position or all persons filing such valid declarations of candidacy have died or been disqualified.

**Sec. 20 was vetoed. See message at end of chapter.*

*Sec. 21. RCW 29A.24.150 and 2003 c 111 s 615 are each amended to read as follows:

The election officer with whom declarations of candidacy are filed shall give notice of a void in candidacy for ((a nonpartisan)) an office ((,)) by notifying press, radio, and television in the county or counties involved and by such other means as may now or hereafter be provided by law. The notice shall state the office, and the time and place for filing declarations of candidacy.

**Sec. 21 was vetoed. See message at end of chapter.*

*Sec. 22. RCW 29A.24.160 and 2003 c 111 s 616 are each amended to read as follows:

Filings to fill a void in candidacy for ((nonpartisan)) an office must be made in the same manner and with the same official as required during the regular filing period for such office ((, except that nominating signature petitions that may be required of candidates filing for certain district offices during the normal filing period may not be required of candidates filing during the special three-day filing period)).

**Sec. 22 was vetoed. See message at end of chapter.*

*Sec. 23. RCW 29A.24.170 and 2003 c 111 s 617 are each amended to read as follows:

Filings for ((a nonpartisan)) an office shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county or counties and by such other means as may now or hereafter be provided by law whenever before the sixth Tuesday prior to a primary:

(1) A void in candidacy occurs;

(2) A vacancy occurs in ((any nonpartisan)) an office leaving an unexpired term to be filled by an election for which filings have not been held; or

(3) A ((nominee)) candidate for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified.

Candidacies validly filed within said three-day period shall appear on the ballot as if made during the earlier filing period.

Sec. 23 was vetoed. See message at end of chapter.

*Sec. 24. RCW 29A.24.180 and 2003 c 111 s 618 are each amended to read as follows:

Filings for a nonpartisan office (other than judge of the supreme court or superintendent of public instruction) shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law, when:

(1) A void in candidacy for such nonpartisan office occurs on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election; or

(2) A ((nominee)) candidate for judge of the superior court eligible after a contested primary for a certificate of election by Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified within the ten day period immediately following the last day allotted for a candidate to withdraw; or

(3) A vacancy occurs in any nonpartisan office on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election leaving an unexpired term to be filled by an election for which filings have not been held.

The candidate receiving a plurality of the votes cast for that office in the general election shall be deemed elected.

Sec. 24 was vetoed. See message at end of chapter.

*Sec. 25. RCW 29A.24.190 and 2003 c 111 s 619 are each amended to read as follows:

A scheduled election ((shall be lapsed)) lapses, the office is deemed stricken from the ballot, no purported write-in votes may be counted, and no candidate may be certified as elected, when:

(1) In an election for judge of the supreme court ((or)), superintendent of public instruction, or a partisan office, a void in candidacy occurs on or after the sixth Tuesday prior to a primary, public filings and the primary being an indispensable phase of the election process for such offices;

(2) Except as otherwise specified in RCW 29A.24.180, a ((nominee)) candidate for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution dies or is disqualified on or after the sixth Tuesday prior to a primary;

(3) In other elections for nonpartisan office a void in candidacy occurs or a vacancy occurs involving an unexpired term to be filled on or after the sixth Tuesday prior to an election.

Sec. 25 was vetoed. See message at end of chapter.

*Sec. 26. RCW 29A.24.310 and 2003 c 111 s 622 are each amended to read as follows:

Any person who desires to be a write-in candidate and have such votes counted at a primary or election may file a declaration of candidacy with the officer designated in RCW 29A.24.070 not later than the day before the primary or election. Declarations of candidacy for write-in candidates must be accompanied by a filing fee in the same

manner as required of other candidates filing for the office as provided in RCW 29A.24.090.

Votes cast for write-in candidates who have filed such declarations of candidacy ((and write-in votes for persons appointed by political parties pursuant to RCW 29A.28.020)) need only specify the name of the candidate in the appropriate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number ((or political party)), if the manner in which the write-in is done does not make the office or position clear. In order for write-in votes to be valid in jurisdictions employing optical-scan mark sense ballot systems the voter must complete the proper mark next to the write-in line for that office.

No person may file as a write-in candidate where:

(1) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(2) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election, unless one or the other of the two filings is for the office of precinct committeeperson;

(3) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless one of the two offices for which he or she is a candidate is precinct committeeperson.

The declaration of candidacy shall be similar to that required by RCW 29A.24.030. No write-in candidate filing under this section may be included in any voter's pamphlet produced under chapter 29A.32 RCW unless that candidate qualifies to have his or her name printed on the general election ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29A.32 RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets.

**Sec. 26 was vetoed. See message at end of chapter.*

***NEW SECTION.** Sec. 27. A new section is added to chapter 29A.28 RCW to read as follows:

If the death or disqualification of a candidate for a partisan or nonpartisan office does not give rise to the opening of a new filing period under RCW 29A.24.170, then the following will occur:

(1) If the candidate dies or becomes disqualified after filing a declaration of candidacy but before the close of the filing period, then the declaration of candidacy is void and his or her name will not appear on the ballot;

(2) If the candidate dies or becomes disqualified after the close of the filing period but before the day of the primary, then his or her name will appear on the primary ballot and all otherwise valid votes for that candidate will be tabulated. The candidate's name will not appear on the general election ballot even if he or she otherwise would have qualified to do so, but no other candidate will advance, or be substituted, in the place of that candidate. If the candidate was the only candidate to qualify to advance to the general election, then the

general election for that office lapses, and the office will be regarded as vacant as of the time the newly elected official would have otherwise taken office;

(3) If the candidate dies or becomes disqualified on or after the day of the primary, and he or she would have otherwise qualified to appear on the general election ballot, then his or her name will appear on the general election ballot and all otherwise valid votes for that candidate will be tabulated. If the candidate received a number of votes sufficient to be elected to office, but for his or her death or disqualification, then the office will be regarded as vacant as of the time the newly elected official would have otherwise taken office.

**Sec. 27 was vetoed. See message at end of chapter.*

*Sec. 28. RCW 29A.28.040 and 2003 c 111 s 704 are each amended to read as follows:

(1) Whenever a vacancy occurs in the United States house of representatives or the United States senate from this state, the governor shall order a special election to fill the vacancy.

(2) Within ten days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than ninety days after the issuance of the writ, fixing a date for the primary for ((nominating)) qualifying candidates for the special vacancy election not less than thirty days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy is in the office of United States representative, the writ

of election shall specify the congressional district that is vacant.

(3) If the vacancy occurs less than six months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary and special vacancy elections shall be held in concert with the state primary and state general election in that year.

(4) If the vacancy occurs on or after the first day for filing under RCW 29A.24.050 and on or before the second Friday following the close of the filing period, a special filing period of three normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary ((at which candidates are to be nominated)). The names of candidates who have filed valid declarations of candidacy during this three-day period shall appear on the approaching primary ballot.

(5) If the vacancy occurs later than the second Friday following the close of the filing period, a special primary and special vacancy election to fill the position shall be held after the next state general election but, in any event, no later than the ninetieth day following the November election.

**Sec. 28 was vetoed. See message at end of chapter.*

*Sec. 29. RCW 29A.28.060 and 2003 c 111 s 706 are each amended to read as follows:

The general election laws and laws relating to ((partisan)) primaries ((shall)) for partisan offices apply to the special primaries and vacancy elections provided for in RCW 29A.28.040 through 29A.28.050 to the extent that they are not inconsistent with the provisions of these sections. Statutory time deadlines relating to availability of absentee ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under RCW 29A.04.610.

**Sec. 29 was vetoed. See message at end of chapter.*

*Sec. 30. RCW 29A.32.030 and 2003 c 111 s 803 are each amended to read as follows:

The voters' pamphlet must contain:

(1) Information about each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29A.32.070;

(2) In even-numbered years, statements, if submitted, advocating the candidacies of ((nominees)) candidates qualified to appear on the ballot for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates

may also submit a campaign mailing address and telephone number and a photograph not more than five years old and of a size and quality that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) In even-numbered years, a section explaining how voters may participate in the election campaign process; the address and telephone number of the public disclosure commission established under RCW 42.17.350; and a summary of the disclosure requirements that apply when contributions are made to candidates and political committees;

(5) In even-numbered years the name, address, and telephone number of each political party ((with nominees listed in the pamphlet, if filed with the secretary of state by the state committee of a major political party or the presiding officer of the convention of a minor political party)) for which a candidate appearing on the ballot has expressed a preference on his or her declaration of candidacy, if the party has provided that information to the secretary of state;

(6) In each odd-numbered year immediately before a year in which a president of the United States is to be nominated and elected, information explaining the precinct caucus and convention process used by each major political party to elect

delegates to its national presidential candidate nominating convention. The pamphlet must also provide a description of the statutory procedures by which minor political parties are formed and the statutory methods used by the parties to nominate candidates for president;

(7) In even-numbered years, a description of the office of precinct committee officer and its duties;

(8) An application form for an absentee ballot;

(9) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29A.32.080;

(10) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters.

**Sec. 30 was vetoed. See message at end of chapter.*

*Sec. 31. RCW 29A.32.120 and 2003 c 254 s 6 and 2003 c 111 s 812 are each reenacted and amended to read as follows:

(1) The maximum number of words for statements submitted by candidates is as follows: State representative, one hundred words; state senator, judge of the superior court, judge of the court of appeals, justice of the supreme court, and all state offices voted upon throughout the state, except that of governor, two hundred words; president and vice president, United States senator, United States representative, and governor, three hundred words.

(2) Arguments written by committees under RCW 29A.32.060 may not exceed two hundred fifty words in length.

(3) Rebuttal arguments written by committees may not exceed seventy-five words in length.

(4) The secretary of state shall allocate space in the pamphlet based on the number of candidates ((or nominees)) for each office.

**Sec. 31 was vetoed. See message at end of chapter.*

*Sec. 32. RCW 29A.36.010 and 2003 c 111 s 901 are each amended to read as follows:

On or before the day following the last day allowed for ((political parties to fill vacancies in the ticket as provided by RCW 29A.28.010)) candidates to withdraw under RCW 29A.24.130, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party ((designation)) preference, if any.

**Sec. 32 was vetoed. See message at end of chapter.*

*Sec. 33. RCW 29A.36.070 and 2003 c 111 s 907 are each amended to read as follows:

(1) Except as provided to the contrary in RCW 82.14.036, 82.46.021, or 82.80.090, the ballot title of any referendum filed on an enactment or portion of an enactment of a local government and any other question submitted to the voters of a local government consists of three elements: (a) An identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; and (c) a question. The ballot title must conform with the requirements and be displayed substantially as provided under RCW 29A.72.050, except that the concise description must

not exceed seventy-five words. If the local governmental unit is a city or a town, the concise statement shall be prepared by the city or town attorney. If the local governmental unit is a county, the concise statement shall be prepared by the prosecuting attorney of the county. If the unit is a unit of local government other than a city, town, or county, the concise statement shall be prepared by the prosecuting attorney of the county within which the majority area of the unit is located.

(2) A referendum measure on the enactment of a unit of local government shall be advertised in the manner provided for ((nominees)) candidates for elective office.

(3) Subsection (1) of this section does not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition.

**Sec. 33 was vetoed. See message at end of chapter.*

*Sec. 34. RCW 29A.36.100 and 2003 c 111 s 910 are each amended to read as follows:

Except for the candidates for the positions of president and vice president or for a partisan or nonpartisan office for which no primary is required, the names of all candidates who, under this title, filed a declaration of candidacy ((, were certified as a candidate to fill a vacancy on a major party ticket, or were nominated as an independent or minor party candidate)) will appear on the appropriate ballot at the primary throughout the jurisdiction ((in which they are to be nominated)) of the office for which they are a candidate.

**Sec. 34 was vetoed. See message at end of chapter.*

*Sec. 35. RCW 29A.36.170 and 2003 c 111 s 917 are each amended to read as follows:

(1) Except as provided in RCW 29A.36.180 and in subsection (2) of this section, on the ballot at the general election for ((a nonpartisan)) an office for which a primary was held, only the names of the candidate who received the greatest number of votes and the candidate who received the next greatest number of votes for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted, no candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary. On the ballot at the general election for ((any other nonpartisan)) an office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW 29A.36.130.

(2) On the ballot at the general election for the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed under the title of the office for that position.

*_Sec. 35 was vetoed. See message at end of chapter._

*Sec. 36. RCW 29A.36.200 and 2003 c 111 s 920 are each amended to read as follows:

The names of the persons certified ((as nominees)) by the secretary of state or the county canvassing board as having qualified to appear on

the general election ballot shall be printed on the ballot at the ensuing election.

No name of any candidate ((whose nomination at a primary is required by law shall)) for an office for which a primary is conducted may be placed upon the ballot at a general or special election unless it appears upon the certificate of either (1) the secretary of state ((,)) or (2) the county canvassing board ((, or (3) a minor party convention or the state or county central committee of a major political party to fill a vacancy on its ticket under RCW 29A.28.020)).

Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, a candidate's name shall not appear more than once upon a ballot for a position regularly ((nominated or)) elected at the same election.

**Sec. 36 was vetoed. See message at end of chapter.*

*Sec. 37. RCW 29A.52.010 and 2003 c 111 s 1301 are each amended to read as follows:

Whenever it shall be necessary to hold a special election in an odd-numbered year to fill an unexpired term of any office which is scheduled to be voted upon for a full term in an even-numbered year, no ((September)) primary election shall be held in the odd-numbered year if, after the last day allowed for candidates to withdraw ((, either of the following circumstances exist:

(1) No more than one candidate of each qualified political party has filed a declaration of candidacy for the same partisan office to be filled; or

(2))) no more than two candidates have filed a declaration of candidacy for a single ((nonpartisan)) office to be filled.

In ((either)) this event, the officer with whom the declarations of candidacy were filed shall immediately notify all candidates concerned and the names of the candidates that would have been printed upon the ((September)) primary ballot, but for the provisions of this section, shall be printed as ((nominees)) candidates for the positions sought upon the ((November)) general election ballot.

Sec. 37 was vetoed. See message at end of chapter.

*Sec. 38. RCW 29A.52.110 and 2003 c 111 s 1302 are each amended to read as follows:

Candidates for ((the following offices shall be nominated at)) partisan offices will appear on the ballot at primaries held ((pursuant to the provisions of)) under this chapter ((:

(1) Congressional offices;

(2) All state offices except (a) judicial offices and (b) the office of superintendent of public instruction;

(3) All county offices except (a) judicial offices and (b) those offices where a county home rule charter provides otherwise)).

Sec. 38 was vetoed. See message at end of chapter.

***NEW SECTION.** Sec. 39. A new section is added to chapter 29A.52 RCW to read as follows:

(1) Whenever candidates for partisan office are to be elected, the general election must be preceded by a primary conducted under this chapter, except as

otherwise provided in law. Based upon votes cast at the primary, two candidates must be certified as qualified to appear on the general election ballot, under RCW 29A.52.320 and 29A.36.170.

(2) A primary may not be used to select the nominees of a political party. A primary is a critical stage in the public process by which voters elect candidates to public office.

(3) If a candidate indicates a political philosophy as provided by RCW 29A.24.030(3) on his or her declaration of candidacy, then the philosophy will be listed for the candidate on the primary and general election ballots. Each candidate who does not express a philosophy will be listed as an independent candidate on the primary and general election ballots. Political philosophy will be listed for the information of the voters only, and may not be used for any purpose relating to the conduct, canvassing, or certification of the primary, and may in no way limit the options available to voters in deciding for whom to cast a vote.

**Sec. 39 was vetoed. See message at end of chapter.*

*Sec 40. RCW 29A.52.230 and 2003 c 111 s 1307 are each amended to read as follows:

The offices of superintendent of public instruction, justice of the supreme court, judge of the court of appeals, judge of the superior court, and judge of the district court shall be nonpartisan and the candidates therefor shall be ((nominated)) qualified and elected as such.

All city, town, and special purpose district elective offices shall be nonpartisan and the

candidates therefor shall be ((nominated)) qualified and elected as such.

**Sec. 40 was vetoed. See message at end of chapter.*

*Sec. 41. RCW 29A.52.320 and 2003 c 111 s 1310 are each amended to read as follows:

No later than the day following the certification of the returns of any primary, the secretary of state shall certify to the appropriate county auditors, the names of all persons ((nominated)) qualified to appear on the general election ballot as candidates for offices, the returns of which have been canvassed by the secretary of state.

**Sec. 41 was vetoed. See message at end of chapter.*

*Sec. 42. RCW 29A.52.350 and 2003 c 111 s 1313 are each amended to read as follows:

Except as provided in RCW 29A.32.260, notice for any state, county, district, or municipal election, whether special or general, must be given by at least one publication not more than ten nor less than three days before the election by the county auditor or the officer conducting the election as the case may be, in one or more newspapers of general circulation within the county. The legal notice must contain the title of each office under the proper party ((designation)) preference, the names and addresses of all ((officers)) candidates who have been ((nominated)) qualified to appear on the ballot for an office to be voted upon at that election, together with the ballot titles of all measures, the hours during which the polls will be open, and the polling places for each precinct, giving the address of each polling place. The names of all candidates for nonpartisan offices must be published separately with designation of the offices for which

they are candidates but without party designation. This is the only notice required for a state, county, district, or municipal general or special election and supersedes the provisions of any and all other statutes, whether general or special in nature, having different requirements for the giving of notice of any general or special elections.

Sec. 42 was vetoed. See message at end of chapter.

*Sec. 43. RCW 29A.60.020 and 2003 c 111 s 1502 are each amended to read as follows:

(1) For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29A.24.310 and such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29A.24.310 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office, position, or political party shall be accepted if the canvassing board can determine, to their satisfaction, the voter's intent.

(2) The number of write-in votes cast for each office must be recorded and reported with the canvass for the election.

(3) Write-in votes cast for an individual candidate for an office need not be tallied if the total number of write-in votes cast for the office is not greater than the number of votes cast for the candidate apparently ((nominated)) qualified to

appear on the general election ballot or elected, and the write-in votes could not have altered the outcome of the primary or election. In the case of write-in votes for statewide office or for any office whose jurisdiction encompasses more than one county, write-in votes for an individual candidate must be tallied whenever the county auditor is notified by either the office of the secretary of state or another auditor in a multicounty jurisdiction that it appears that the write-in votes could alter the outcome of the primary or election.

(4) In the case of statewide offices or jurisdictions that encompass more than one county, if the total number of write-in votes cast for an office within a county is greater than the number of votes cast for a candidate apparently ((nominated)) qualified to appear on the general election ballot or elected in a primary or election, the auditor shall tally all write-in votes for individual candidates for that office and notify the office of the secretary of state and the auditors of the other counties within the jurisdiction, that the write-in votes for individual candidates should be tallied.

**Sec. 43 was vetoed. See message at end of chapter.*

*Sec. 44. RCW 29A.60.220 and 2003 c 111 s 1522 are each amended to read as follows:

(1) If the requisite number of any federal, state, county, city, or district offices have not ((been nominated)) qualified to appear on the general election ballot in a primary by reason of two or more persons having an equal and requisite number of votes for being placed on the general election ballot, the official empowered by state law to certify

candidates for the general election ballot shall give notice to the several persons so having the equal and requisite number of votes to attend at the appropriate office at the time designated by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared ((nominated)) qualified and placed on the general election ballot.

(2) If the requisite number of any federal, state, county, city, district, or precinct officers have not been elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the official empowered by state law to issue the original certificate of election shall give notice to the several persons so having the highest and equal number of votes to attend at the appropriate office at the time to be appointed by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared duly elected, and the official shall make out and deliver to the person thus duly declared elected a certificate of election.

**Sec. 44 was vetoed. See message at end of chapter.*

*Sec. 45. RCW 29A.64.010 and 2003 c 111 s 1601 are each amended to read as follows:

An officer of a political party or any person for whom votes were cast in a primary who was not declared ((nominated)) qualified to appear on the general election ballot may file a written application for a recount of the votes or a portion of the votes cast at that primary for all persons for whom votes were cast for ((nomination to)) that office.

An officer of a political party or any person for whom votes were cast at any election may file a written application for a recount of the votes or a portion of the votes cast at that election for all candidates for election to that office.

Any group of five or more registered voters may file a written application for a recount of the votes or a portion of the votes cast upon any question or issue. They shall designate one of the members of the group as chair and shall indicate the voting residence of each member of the group.

An application for a recount of the votes cast for an office or on a ballot measure must be filed with the officer with whom filings are made for the jurisdiction.

An application for a recount must specify whether the recount will be done manually or by the vote tally system. A recount done by the vote tally system must use programming that recounts and reports only the office or ballot measure in question. The county shall also provide for a test of the logic and accuracy of that program.

An application for a recount must be filed within three business days after the county canvassing board or secretary of state has declared the official results of the primary or election for the office or issue for which the recount is requested.

This chapter applies to the recounting of votes cast by paper ballots and to the recounting of votes recorded on ballots counted by a vote tally system.

**Sec. 45 was vetoed. See message at end of chapter.*

*Sec. 46. RCW 29A.64.020 and 2003 c 111 s 1602 are each amended to read as follows:

(1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently ((nominated)) qualified to appear on the general election ballot or elected to any office and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position the declaration of candidacy for which was filed with the secretary of state, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b) If the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29A.64.030, 29A.64.040, and 29A.64.060. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system.

**Sec. 46 was vetoed. See message at end of chapter.*

*Sec. 47. RCW 29A.64.040 and 2003 c 111 s 1604 are each amended to read as follows:

(1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives.

Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The canvassing board shall not permit the tabulation of

votes for any ((nomination, election,)) office or issue other than the ones for which a recount was applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

(3) The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process.

**Sec. 47 was vetoed. See message at end of chapter.*

*Sec. 48. RCW 29A.64.060 and 2003 c 111 s 1606 are each amended to read as follows:

Upon completion of the canvass of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts must be transmitted to the same officers who received the abstract on which the recount was based.

If the ((nomination, election,)) office or issue for which the recount was conducted was submitted only to the voters of a county, the canvassing board

shall file the amended abstract with the original results of that election or primary.

If the ((nomination, election,)) office or issue for which a recount was conducted was submitted to the voters of more than one county, the secretary of state shall canvass the amended abstracts and shall file an amended abstract with the original results of that election. An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election.

**Sec. 48 was vetoed. See message at end of chapter.*

*Sec. 49. RCW 29A.64.080 and 2003 c 111 s 1608 are each amended to read as follows:

The canvassing board shall determine the expenses for conducting a recount of votes.

The cost of the recount shall be deducted from the amount deposited by the applicant for the recount at the time of filing the request for the recount, and the balance shall be returned to the applicant. If the costs of the recount exceed the deposit, the applicant shall pay the difference. No charges may be deducted by the canvassing board from the deposit for a recount if the recount changes the result of the ((nomination)) primary or election for which the recount was ordered.

**Sec. 49 was vetoed. See message at end of chapter.*

*Sec. 50. RCW 29A.68.010 and 2003 c 111 s 1701 are each amended to read as follows:

Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person

charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

(1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or

(2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or

(3) The name of any person has been or is about to be wrongfully placed upon the ballots; or

(4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or

(5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or

(6) An error or omission has occurred or is about to occur in the issuance of a certificate of election.

An affidavit of an elector under subsections (1) and (3) above when relating to a primary election must be filed with the appropriate court no later than the second Friday following the closing of the

filing period ((for nominations)) for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later 13 than ten days following the issuance of a certificate of election.

**Sec. 50 was vetoed. See message at end of chapter.*

*Sec. 51. RCW 29A.80.010 and 2003 c 111 s 2001 are each amended to read as follows:

(((1))) Each political party organization may ((:

(a) Make its own)) adopt rules ((and regulations; and

(b) Perform all functions inherent in such an organization.

(2) Only major political parties may designate candidates to appear on the state primary ballot as provided in RCW 29A.28.010)) governing its own organization and the nonstatutory functions of that organization.

**Sec. 51 was vetoed. See message at end of chapter.*

*Sec. 52. RCW 29A.84.260 and 2003 c 111 s 2114 are each amended to read as follows:

The following apply to persons signing ((nominating)) petitions prescribed by RCW 29A.20.150 and 29A.24.100:

(1) A person who signs a petition with any other than his or her name shall be guilty of a misdemeanor.

(2) A person shall be guilty of a misdemeanor if the person knowingly: Signs more than one petition for any single candidacy of any single candidate; signs the petition when he or she is not a legal voter; or makes a false statement as to his or her residence.

**Sec. 52 was vetoed. See message at end of chapter.*

*Sec. 53. RCW 29A.84.310 and 2003 c 111 s 2117 are each amended to read as follows:

Every person who:

(1) Knowingly provides false information on his or her declaration of candidacy ((or)), filing petition ((of nomination)), or nominating petition; or

(2) Conceals or fraudulently defaces or destroys a certificate that has been filed with an elections officer under RCW ((29A.20.110 through 29A.20.200)) 29A.20.120 through 29A.20.180 or a declaration of candidacy or petition of nomination that has been filed with an elections officer, or any part of such a certificate, declaration, or petition, is guilty of a class C felony punishable under RCW 9A.20.021.

**Sec. 53 was vetoed. See message at end of chapter.*

*Sec. 54. RCW 29A.84.710 and 2003 c 111 s 2137 are each amended to read as follows:

Every person who:

(1) Knowingly and falsely issues a certificate of ((nomination)) qualification or election; or

(2) Knowingly provides false information on a certificate which must be filed with an elections officer under RCW ((29A.20.110 through 29A.20.200)) 29A.20.120 through 29A.20.180, is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 54 was vetoed. See message at end of chapter.

*Sec. 55. RCW 42.17.020 and 2002 c 75 s 1 are each amended to read as follows:

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(3) "Ballot proposition" means any "measure" as defined by RCW ((29.01.110)) 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

(4) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(5) "Bona fide political party" means:

(a) An organization that has filed a valid certificate of nomination with the secretary of state under chapter ((29.24)) 29A.20 RCW;

(b) The governing body of the state organization of a major political party, as defined in RCW ((29.01.090)) 29A.04.085, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(6) "Depository" means a bank designated by a candidate or political committee pursuant to RCW 42.17.050.

(7) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17.050, to perform the duties specified in that section.

(8) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(9) "Caucus political committee" means a political committee organized and maintained by the members of ((a major political party in)) the majority caucus in the state senate or state house of representatives, or by the members of the minority caucus in the state senate or state house of representatives.

(10) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(11) "Commission" means the agency established under RCW 42.17.350.

(12) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: PROVIDED, That for the purpose of compliance with RCW 42.17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for

expenses incurred while the official is engaged in the official business of the governmental entity.

(13) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(14)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution

and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(15) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(16) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: PROVIDED, That an election in which the

qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(17) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(18) "Election cycle" means the period beginning on the first day of December after the date of the last previous general election for the office that the candidate seeks and ending on November 30th after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on November 30th after the special election.

(19) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made.

The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(20) "Final report" means the report described as a final report in RCW 42.17.080(2).

(21) "General election" for the purposes of RCW 42.17.640 means the election that results in the election of a person to a state office. It does not include a primary.

(22) "Gift," is as defined in RCW 42.52.010.

(23) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household. For the purposes of RCW 42.17.640 through 42.17.790, "immediate family" means an individual's spouse, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse and the spouse of any such person.

(24) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising

supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one independent expenditure if their cumulative value is five hundred dollars or more.

(25)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family as defined for purposes of RCW 42.17.640 through 42.17.790, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(26) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(27) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(28) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

(29) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

(30) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(31) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, the term "person in interest" means and includes the parent or duly appointed legal representative.

(32) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

(33) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(34) "Primary" for the purposes of RCW 42.17.640 means the procedure for ((nominating)) qualifying a candidate to state office under chapter ((29.18 or 29.21 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29.18 or 29.21)) 29A.52 RCW.

(35) "Public office" means any federal, state, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(36) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(37) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW ((29.82.015)) 29A.56.120 and ending thirty days after the recall election.

(38) "State legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(39) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(40) "State official" means a person who holds a state office.

(41) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate prior to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17.065.

(42) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires.

**Sec. 55 was vetoed. See message at end of chapter.*

***NEW SECTION.** Sec. 56. (1) The subheadings in chapter 29A.52 RCW "PARTISAN PRIMARIES" AND "NONPARTISAN PRIMARIES" will be combined under one subheading "PRIMARIES."

(2) The subheading in chapter 29A.20 RCW "MINOR PARTY AND INDEPENDENT CANDIDATE NOMINATIONS" will be changed to "MINOR AND INDEPENDENT PRESIDENTIAL CANDIDATES."

(3) The code reviser shall recaption RCW 29A.24.100 as "Filing petition--Form."

(4) The code reviser shall recaption RCW 29A.36.170 as "Candidates qualified for the general election."

(5) The code reviser shall recaption RCW 29A.52.320 as "Certification of candidates qualified to appear on the general election ballot."

(6) The code reviser shall recaption RCW 29A.84.310 as "Candidacy declarations, filing petitions, nominating petitions."

(7) The code reviser shall recaption RCW 29A.84.710 as "Documents regarding qualification, election, candidacy--Frauds and falsehoods."

**Sec. 56 was vetoed. See message at end of chapter.*

***NEW SECTION.** Sec. 57. The following acts or parts of acts are each repealed:

(1) RCW 29A.04.157 (September primary) and 2003 c 111 s 128;

(2) RCW 29A.20.110 (Definitions--"Convention" and "election jurisdiction") and 2003 c

111 s 505, 1977 ex.s. c 329 s 1, & 1965 c 9 s 29.24.010;

(3) RCW 29A.20.130 (Convention--Notice) and 2003 c 111 s 507;

(4) RCW 29A.20.200 (Declarations of candidacy required, exceptions--Payment of fees) and 2003 c 111 s 514, 1990 c 59 s 103, 1989 c 215 s 8, 1977 ex.s. c 329 s 7, & 1965 c 9 s 29.24.070;

(5) RCW 29A.24.200 (Lapse of election when no filing for single positions--Effect) and 2003 c 111 s 620;

(6) RCW 29A.24.210 (Vacancy in partisan elective office—Special filing period) and 2003 c 111 s 621;

(7) RCW 29A.28.010 (Major party ticket) and 2003 c 111 s 701, 1990 c 59 s 102, 1977 ex.s. c 329 s 12, & 1965 c 9 s 29.18.150;

(8) RCW 29A.28.020 (Death or disqualification--Correcting ballots--Counting votes already cast) and 2003 c 111 s 702, 2001 c 46 s 4, & 1977 ex.s. c 329 s 13;

(9) RCW 29A.36.190 (Partisan candidates qualified for general election) and 2003 c 111 s 919;

(10) RCW 29A.52.130 (Blanket primary authorized) and 2003 c 111 s 304; and

(11) RCW 29A.04.903 (Effective date--2003 c 111) and 2003 c 111 s 2405.

**Sec. 57 was vetoed. See message at end of chapter.*

PART 2 - NOMINATING PRIMARY

***NEW SECTION.** Sec. 101. A new section is added to chapter 29A.52 RCW to read as follows:

If a court of competent jurisdiction holds that a candidate may not identify a major or minor political party as best approximating his or her political philosophy, as provided in RCW 29A.24.030(3), and all appeals of that court order have been exhausted or waived, the secretary of state shall notify the governor, the majority and minority leaders of the two largest caucuses in the senate and the house of representatives, the code reviser, and all county auditors that the state can no longer conduct a qualifying primary and instead will conduct a nominating primary. Upon issuance of such a notification by the secretary of state, no qualifying primary may be held in Washington.

**Sec. 101 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 102. A new section is added to chapter 29A.04 RCW to read as follows:

As used in this title:

(1) "Ballot" means, as the context implies, either:

(a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;

(b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;

(c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or

(d) The physical document on which the voter's choices are to be recorded;

(2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;

(5) "Provisional ballot" means a ballot issued to a voter at the polling place on election day by the precinct election board, for one of the following reasons:

(a) The voter's name does not appear in the poll book;

(b) There is an indication in the poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote;

(6) "Party ballot" means a primary election ballot specific to a particular major political party that lists all partisan offices to be voted on at that primary, and the candidates for those offices who affiliate with that same major political party;

(7) "Nonpartisan ballot" means a primary election ballot that lists all nonpartisan races and ballot measures to be voted on at that primary.

NEW SECTION. Sec. 103. A new section is added to chapter 29A.04 RCW to read as follows:

"Major political party" means a political party of which at least one nominee for president, vice president, United States senator, or a statewide office received at least five percent of the total vote cast at the last preceding state general election in an even-numbered year. A political party qualifying as a major political party under this section retains such status until the next even-year election at which a candidate of that party does not achieve at least five percent of the vote for one of the previously specified offices. If none of these offices appear on the ballot in an even-year general election, the major party retains its status as a major party through that election. However, a political party of which no nominee received at least ten percent of the total vote cast may forgo its status as a major political party by filing with the secretary of state an appropriate party rule within sixty days of attaining major party status under this section, or within fifteen days of the effective date of this section, whichever is later.

NEW SECTION. Sec. 104. A new section is added to chapter 29A.04 RCW to read as follows:

The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; to appoint the precinct election officers and to provide for their compensation; to provide the supplies and materials necessary for the conduct of elections to the precinct election officers; and to publish and post notices of calling such primaries and elections in the manner provided by law. The notice of a primary held in an even-numbered year must indicate that the office of precinct committee officer will be on the ballot. The auditor shall also apportion to each city, town, or district, and to the state of Washington in the odd-numbered year, its share of the expense of such primaries and elections. This section does not apply to general or special elections for any city, town, or district that is not subject to section 106 of this act and RCW 29A.04.330, but all such elections must be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections.

NEW SECTION. Sec. 105. A new section is added to chapter 29A.04 RCW to read as follows:

Nominating primaries for general elections to be held in November, and the election of precinct committee officers, must be held on the third Tuesday of the preceding September or on the seventh Tuesday immediately preceding such general election, whichever occurs first.

NEW SECTION. Sec. 106. A new section is added to chapter 29A.04 RCW to read as follows:

(1) All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial, county, city, town, and district officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November, in the year in which they may be called. A statewide general election shall be held on the first Tuesday after the first Monday of November of each year. However, the statewide general election held in odd-numbered years shall be limited to (a) city, town, and district general elections as provided for in RCW 29A.04.330, or as otherwise provided by law; (b) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the Congress of the United States; (c) the election of state and county officers for the remainder of any unexpired terms of offices created by or whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate.

(2) A county legislative authority may, if it deems an emergency to exist, call a special county election by presenting a resolution to the county auditor at least forty-five days prior to the proposed election date. Except as provided in subsection (4) of this section, a special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

(a) The first Tuesday after the first Monday in February;

(b) The second Tuesday in March;

(c) The fourth Tuesday in April;

(d) The third Tuesday in May;

(e) The day of the primary as specified by section 105 of this act; or

(f) The first Tuesday after the first Monday in November.

(3) In addition to the dates set forth in subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

(4) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29A.56 RCW, the date on which a special election may be called by the county legislative authority under subsection (2) of this section during the month

of that primary is the date of the presidential primary.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections except for those elections held pursuant to a home-rule charter adopted under Article XI, section 4 of the state Constitution. This section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer.

NEW SECTION. Sec. 107. A new section is added to chapter 29A.08 RCW to read as follows:

No record may be created or maintained by a state or local governmental agency or a political organization that identifies a voter with the information marked on the voter's ballot, including the choice that a voter makes on a partisan primary ballot regarding political party affiliation.

NEW SECTION. Sec. 108. A new section is added to chapter 29A.08 RCW to read as follows:

Under no circumstances may an individual be required to affiliate with, join, adhere to, express faith in, or declare a preference for, a political party or organization upon registering to vote.

NEW SECTION. Sec. 109. A new section is added to chapter 29A.12 RCW to read as follows:

The secretary of state shall not approve a vote tallying system unless it:

(1) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(2) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(3) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each issue of the ballot in that precinct;

(4) Produces precinct and cumulative totals in printed form; and

(5) Except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other state or election jurisdiction.

NEW SECTION. Sec. 110. A new section is added to chapter 29A.20 RCW to read as follows:

(1) Any nomination of a candidate for partisan public office by other than a major political party may be made only: (a) In a convention held not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with section 118 of this act; (b) as provided by section 147 of this act; or (c) as otherwise provided in this section. Minor political party and independent candidates may appear only on the general election ballot.

(2) Nominations of candidates for president and vice president of the United States other than by

a major political party may be made either at a convention conducted under subsection (1) of this section, or at a similar convention taking place not earlier than the first Sunday in July and not later than seventy days before the general election. Conventions held during this time period may not nominate candidates for any public office other than president and vice president of the United States, except as provided in subsection (3) of this section.

(3) If a special filing period for a partisan office is opened under section 116 of this act, candidates of minor political parties and independent candidates may file for office during that special filing period. The names of those candidates may not appear on the general election ballot unless they are nominated by convention held no later than five days after the close of the special filing period and a certificate of nomination is filed with the filing officer no later than three days after the convention. The requirements of section 189 of this act do not apply to such a convention.

(4) A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice president, United States senator, United States representative, or a statewide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by section 111 of this act. For all other offices for which

nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention.

NEW SECTION. Sec. 111. A new section is added to chapter 29A.20 RCW to read as follows:

(1) To be valid, a convention must be attended by at least one hundred registered voters.

(2) In order to nominate candidates for the offices of president and vice president of the United States, United States senator, United States representative, or any statewide office, a nominating convention shall obtain and submit to the filing officer the signatures of at least one thousand registered voters of the state of Washington. In order to nominate candidates for any other office, a nominating convention shall obtain and submit to the filing officer the signatures of one hundred persons who are registered to vote in the jurisdiction of the office for which the nominations are made.

NEW SECTION. Sec. 112. A new section is added to chapter 29A.20 RCW to read as follows:

A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by section 154(3) of this act. The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one

nominating petition under this chapter for an office for an election.

NEW SECTION. Sec. 113. A new section is added to chapter 29A.20 RCW to read as follows:

Not later than the Friday immediately preceding the first day for candidates to file, the secretary of state shall notify the county auditors of the names and designations of all minor party and independent candidates who have filed valid convention certificates and nominating petitions with that office. Except for the offices of president and vice president, persons nominated under this chapter shall file declarations of candidacy as provided by section 158 of this act and RCW 29A.24.070. The name of a candidate nominated at a convention shall not be printed upon the general election ballot unless he or she pays the fee required by law to be paid by candidates for the same office to be nominated at a primary.

NEW SECTION. Sec. 114. A new section is added to chapter 29A.24 RCW to read as follows:

(1) The nominating petition authorized by section 160 of this act must be printed on sheets of uniform color and size, must include a place for each individual to sign and print his or her name and the address, city, and county at which he or she is registered to vote, and must contain no more than twenty numbered lines.

(2) For candidates for nonpartisan office and candidates of a major political party for partisan office, the nominating petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomination is made) , hereby petition that the name of (candidate's name) be printed on the official primary ballot for the office of (insert name of office) .

(3) For independent candidates and candidates of a minor political party for partisan office, the nominating petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomination is made), hereby petition that the name of (candidate's name) be printed on the official general election ballot for the office of (insert name of office).

NEW SECTION. Sec. 115. A new section is added to chapter 29A.24 RCW to read as follows:

A candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29A.24.050 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods held under this title. The filing officer may permit the withdrawal of a

filing for the office of precinct committee officer at the request of the candidate at any time if no absentee ballots have been issued for that office and the ballots for that precinct have not been printed. The filing officer may permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary ballots for that city, town, or special district have not been ordered. No filing fee may be refunded to any candidate who withdraws under this section. Notice of the deadline for withdrawal of candidacy and that the filing fee is not refundable shall be given to each candidate at the time he or she files.

NEW SECTION. Sec. 116. A new section is added to chapter 29A.24 RCW to read as follows:

Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the sixth Tuesday prior to a primary, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any such special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by such other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the ballot as if filed during the regular filing period.

NEW SECTION. Sec. 117. A new section is added to chapter 29A.24 RCW to read as follows:

Any person who desires to be a write-in candidate and have such votes counted at a primary or election may file a declaration of candidacy with the officer designated in RCW 29A.24.070 not later than the day before the primary or election. Declarations of candidacy for write-in candidates must be accompanied by a filing fee in the same manner as required of other candidates filing for the office as provided in section 160 of this act.

Votes cast for write-in candidates who have filed such declarations of candidacy and write-in votes for persons appointed by major political parties pursuant to section 192 of this act need only specify the name of the candidate in the appropriate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number or political party, if the manner in which the write-in is done does not make the office or position clear.

No person may file as a write-in candidate where:

(1) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(2) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election, unless one or

the other of the two filings is for the office of precinct committeeperson;

(3) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless one of the two offices for which he or she is a candidate is precinct committeeperson.

The declaration of candidacy shall be similar to that required by section 158 of this act. No write-in candidate filing under this section may be included in any voter's pamphlet produced under chapter 29A.32 RCW unless that candidate qualifies to have his or her name printed on the general election ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29A.32 RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets.

NEW SECTION. Sec. 118. A new section is added to chapter 29A.28 RCW to read as follows:

(1) Whenever a vacancy occurs in the United States house of representatives or the United States senate from this state, the governor shall order a special election to fill the vacancy. Minor political party candidates and independent candidates may be nominated through the convention procedures provided in chapter 29A.20 RCW.

(2) Within ten days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than ninety days after the issuance of the writ, fixing a date for the primary for nominating major political party candidates for the special vacancy election not less

than thirty days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy is in the office of United States representative, the writ of election shall specify the congressional district that is vacant.

(3) If the vacancy occurs less than six months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary, special vacancy election, and minor party and independent candidate nominating conventions must be held in concert with the state primary and state general election in that year.

(4) If the vacancy occurs on or after the first day for filing under RCW 29A.24.050 and on or before the second Friday following the close of the filing period, a special filing period of three normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which major political party candidates are to be nominated. The names of major political party candidates who have filed valid declarations of candidacy during this three-day period shall appear on the approaching primary ballot. The requirements of section 189 of this act do not apply to a minor political party or independent candidate convention held under this subsection.

(5) If the vacancy occurs later than the second Friday following the close of the filing period, a special primary, special vacancy election, and the minor party and independent candidate conventions to fill the position shall be held after the next state general election but, in any event, no later than the ninetieth day following the November election.

NEW SECTION. Sec. 119. A new section is added to chapter 29A.28 RCW to read as follows:

The general election laws and laws relating to partisan primaries shall apply to the special primaries and vacancy elections provided for in chapter 29A.28 RCW to the extent that they are not inconsistent with the provisions of these sections. Minor political party and independent candidates may appear only on the general election ballot. Statutory time deadlines relating to availability of absentee ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under section 151 of this act.

NEW SECTION. Sec. 120. A new section is added to chapter 29A.28 RCW to read as follows:

If a vacancy occurs in the office of precinct committee officer by reason of death, resignation, or disqualification of the incumbent, or because of failure to elect, the respective county chair of the county central committee shall fill the vacancy by appointment. However, in a legislative district having a majority of its precincts in a county with a population of one million or more, the appointment

may be made only upon the recommendation of the legislative district chair. The person so appointed must have the same qualifications as candidates when filing for election to the office for that precinct. When a vacancy in the office of precinct committee officer exists because of failure to elect at a state primary, the vacancy may not be filled until after the organization meeting of the county central committee and the new county chair has been selected as provided by RCW 29A.80.030.

NEW SECTION. Sec. 121. A new section is added to chapter 29A.32 RCW to read as follows:

The voters' pamphlet must contain:

(1) Information about each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29A.32.070;

(2) In even-numbered years, statements, if submitted, advocating the candidacies of nominees for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit a campaign mailing address and telephone number and a photograph not more than five years old and of a size and quality that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) In even-numbered years, a section explaining how voters may participate in the election campaign process; the address and telephone number of the public disclosure commission established under RCW 42.17.350; and a summary of the disclosure requirements that apply when contributions are made to candidates and political committees;

(5) In even-numbered years the name, address, and telephone number of each political party with nominees listed in the pamphlet, if filed with the secretary of state by the state committee of a major political party or the presiding officer of the convention of a minor political party;

(6) In each odd-numbered year immediately before a year in which a president of the United States is to be nominated and elected, information explaining the precinct caucus and convention process used by each major political party to elect delegates to its national presidential candidate nominating convention. The pamphlet must also provide a description of the statutory procedures by which minor political parties are formed and the statutory methods used by the parties to nominate candidates for president;

(7) An application form for an absentee ballot;

(8) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29A.32.080;

(9) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters.

NEW SECTION. Sec. 122. A new section is added to chapter 29A.32 RCW to read as follows:

If the secretary of state prints and distributes a voters' pamphlet for a primary in an even-numbered year, it must contain:

(1) A description of the office of precinct committee officer and its duties;

(2) An explanation that, for partisan offices, only voters who choose to affiliate with a major political party may vote in that party's primary election, and that voters must limit their participation in a partisan primary to one political party; and

(3) An explanation that minor political party candidates and independent candidates will appear only on the general election ballot.

NEW SECTION. Sec. 123. A new section is added to chapter 29A.32 RCW to read as follows:

The local voters' pamphlet shall include but not be limited to the following:

(1) Appearing on the cover, the words "official local voters' pamphlet," the name of the jurisdiction producing the pamphlet, and the date of the election or primary;

(2) A list of jurisdictions that have measures or candidates in the pamphlet;

(3) Information on how a person may register to vote and obtain an absentee ballot;

(4) The text of each measure accompanied by an explanatory statement prepared by the prosecuting attorney for any county measure or by the attorney for the jurisdiction submitting the measure if other than a county measure. All explanatory statements for city, town, or district measures not approved by the attorney for the jurisdiction submitting the measure shall be reviewed and approved by the county prosecuting attorney or city attorney, when applicable, before inclusion in the pamphlet;

(5) The arguments for and against each measure submitted by committees selected pursuant to RCW 29A.32.280; and

(6) For partisan primary elections, information on how to vote the applicable ballot format and an explanation that minor political party candidates and independent candidates will appear only on the general election ballot.

NEW SECTION. Sec. 124. A new section is added to chapter 29A.36 RCW to read as follows:

On or before the day following the last day for major political parties to fill vacancies in the ticket as provided by section 191 of this act, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each

candidate, his or her address, and his or her party designation, if any. Minor political party and independent candidates may appear only on the general election ballot.

NEW SECTION. Sec. 125. A new section is added to chapter 29A.36 RCW to read as follows:

Except for the candidates for the positions of president and vice president, for a partisan or nonpartisan office for which no primary is required, or for independent or minor party candidates, the names of all candidates who, under this title, filed a declaration of candidacy or were certified as a candidate to fill a vacancy on a major party ticket will appear on the appropriate ballot at the primary throughout the jurisdiction in which they are to be nominated.

NEW SECTION. Sec. 126. A new section is added to chapter 29A.36 RCW to read as follows:

Partisan primaries must be conducted using either:

(1) A consolidated ballot format that includes a major political party identification check-off box that allows a voter to select from a list of the major political parties the major political party with which the voter chooses to affiliate. The consolidated ballot must include all partisan races, nonpartisan races, and ballot measures to be voted on at that primary; or

(2) A physically separate ballot format that includes both party ballots and a nonpartisan ballot. A party ballot must be specific to a particular major political party and may include only the partisan

offices to be voted on at that primary and the names of candidates for those partisan offices who designated that same major political party in their declarations of candidacy. The nonpartisan ballot must include all nonpartisan races and ballot measures to be voted on at that primary.

NEW SECTION. Sec. 127. A new section is added to chapter 29A.36 RCW to read as follows:

(1) If the consolidated ballot format is used, the major political party identification check-off box must appear on the primary ballot before all offices and ballot measures. Clear and concise instructions to the voter must be prominently displayed immediately before the list of major political parties, and must include:

(a) A question asking the voter to indicate the major political party with which the voter chooses to affiliate;

(b) A statement that, for a major political party candidate, only votes cast by voters who choose to affiliate with that same major political party will be tabulated and reported;

(c) A statement that votes cast for a major political party candidate by a voter who chooses to affiliate with a different major political party will not be tabulated or reported;

(d) A statement that votes cast for a major political party candidate by a voter who fails to select a major political party affiliation will not be tabulated or reported;

(e) A statement that votes cast for a major political party candidate by a voter who selects more

than one major political party with which to affiliate will not be tabulated or reported; and

(f) A statement that the party identification option will not affect votes cast for candidates for nonpartisan offices, or for or against ballot measures.

(2) If the physically separate ballot format is used, clear and concise instructions to the voter must be prominently displayed, and must include:

(a) A statement explaining that only one party ballot and one nonpartisan ballot may be voted;

(b) A statement explaining that if more than one party ballot is voted, none of the party ballots will be tabulated or reported;

(c) A statement explaining that a voter's affiliation with a major political party will be inferred from the act of voting the party ballot for that major political party; and

(d) A statement explaining that every eligible registered voter may vote a nonpartisan ballot, regardless of any party affiliation on the part of the voter.

NEW SECTION. Sec. 128. A new section is added to chapter 29A.36 RCW to read as follows:

Every ballot for a single combination of issues, offices, and candidates shall be uniform within a precinct and shall identify the type of primary or election, the county, and the date of the primary or election, and the ballot or voting device shall contain instructions on the proper method of recording a vote, including write-in votes. Each position, together with the names of the candidates for that office, shall

be clearly separated from other offices or positions in the same jurisdiction. The offices in each jurisdiction shall be clearly separated from each other. No paper ballot or ballot card may be marked in any way that would permit the identification of the person who voted that ballot.

NEW SECTION. Sec. 129. A new section is added to chapter 29A.36 RCW to read as follows:

(1)(a) The positions or offices on a primary consolidated ballot shall be arranged in substantially the following order: United States senator; United States representative; governor; lieutenant governor; secretary of state; state treasurer; state auditor; attorney general; commissioner of public lands; superintendent of public instruction; insurance commissioner; state senator; state representative; county officers; justices of the supreme court; judges of the court of appeals; judges of the superior court; and judges of the district court. For all other jurisdictions on the primary consolidated ballot, the offices in each jurisdiction shall be grouped together and be in the order of the position numbers assigned to those offices, if any.

(b)(i) The positions or offices on a primary party ballot must be arranged in substantially the following order: United States senator; United States representative; governor; lieutenant governor; secretary of state; state treasurer; state auditor; attorney general; commissioner of public lands; insurance commissioner; state senator; state representative; and partisan county officers. For all other jurisdictions on the primary party ballot, the offices in each jurisdiction must be grouped together

and be in the order of the position numbers assigned to those offices, if any.

(ii) The positions or offices on a primary nonpartisan ballot must be arranged in substantially the following order: Superintendent of public instruction; justices of the supreme court; judges of the court of appeals; judges of the superior court; and judges of the district court. For all other jurisdictions on the primary nonpartisan ballot, the offices in each jurisdiction must be grouped together and be in the order of the position numbers assigned to those offices, if any.

(2) The order of the positions or offices on an election ballot shall be substantially the same as on a primary consolidated ballot except that state ballot issues must be placed before all offices. The offices of president and vice president of the United States shall precede all other offices on a presidential election ballot. The positions on a ballot to be assigned to ballot measures regarding local units of government shall be established by the secretary of state by rule.

(3) The political party or independent candidacy of each candidate for partisan office shall be indicated next to the name of the candidate on the primary and election ballot. A candidate shall file a written notice with the filing officer within three business days after the close of the filing period designating the political party to be indicated next to the candidate's name on the ballot if either: (a) The candidate has been nominated by two or more minor political parties or independent conventions; or (b) the candidate has both filed a declaration of

candidacy declaring an affiliation with a major political party and been nominated by a minor political party or independent convention. If no written notice is filed the filing officer shall give effect to the party designation shown upon the first document filed. A candidate may be deemed nominated by a minor party or independent convention only if all documentation required by chapter 29A.20 RCW has been timely filed.

NEW SECTION. Sec. 130. A new section is added to chapter 29A.36 RCW to read as follows:

After the close of business on the last day for candidates to file for office, the filing officer shall, from among those filings made in person and by mail, determine by lot the order in which the names of those candidates will appear on all primary, sample, and absentee ballots. The determination shall be done publicly and may be witnessed by the media and by any candidate. If no primary is required for any nonpartisan office under section 172 of this act or RCW 29A.52.220, or if any independent or minor party candidate files a declaration of candidacy, the names shall appear on the general election ballot in the order determined by lot.

NEW SECTION. Sec. 131. A new section is added to chapter 29A.36 RCW to read as follows:

Except in each county with a population of one million or more, on or before the fifteenth day before a primary or election, the county auditor shall prepare a sample ballot which shall be made readily available to members of the public. The secretary of state shall adopt rules governing the preparation of sample ballots in counties with a population of one

million or more. The rules shall permit, among other alternatives, the preparation of more than one sample ballot by a county with a population of one million or more for a primary or election, each of which lists a portion of the offices and issues to be voted on in that county. The position of precinct committee officer shall be shown on the sample ballot for the primary, but the names of candidates for the individual positions need not be shown.

NEW SECTION. Sec. 132. A new section is added to chapter 29A.36 RCW to read as follows:

(1) On the top of each ballot must be printed clear and concise instructions directing the voter how to mark the ballot, including write-in votes. On the top of each primary ballot must be printed the instructions required by this chapter.

(2) The questions of adopting constitutional amendments or any other state measure authorized by law to be submitted to the voters at that election must appear after the instructions and before any offices.

(3) In a year that president and vice president appear on the general election ballot, the names of candidates for president and vice president for each political party must be grouped together with a single response position for a voter to indicate his or her choice.

(4) On a general election ballot, the candidate or candidates of the major political party that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election must

appear first following the appropriate office heading. The candidate or candidates of the other major political parties will follow according to the votes cast for their nominees for president at the last presidential election, and independent candidates and the candidate or candidates of all other parties will follow in the order of their qualification with the secretary of state.

(5) All paper ballots and ballot cards used at a polling place must be sequentially numbered in such a way to permit removal of such numbers without leaving any identifying marks on the ballot.

NEW SECTION. Sec. 133. A new section is added to chapter 29A.36 RCW to read as follows:

The name of a candidate for a partisan office for which a primary was conducted shall not be printed on the ballot for that office at the subsequent general election unless, at the preceding primary, the candidate receives a number of votes equal to at least one percent of the total number of votes cast for all candidates for that office and a plurality of the votes cast by voters affiliated with that party for candidates for that office affiliated with that party.

NEW SECTION. Sec. 134. A new section is added to chapter 29A.40 RCW to read as follows:

(1) The county auditor shall issue an absentee ballot for the primary or election for which it was requested, or for the next occurring primary or election when ongoing absentee status has been requested if the information contained in a request for an absentee ballot or ongoing absentee status received by the county auditor is complete and

correct and the applicant is qualified to vote under federal or state law. Otherwise, the county auditor shall notify the applicant of the reason or reasons why the request cannot be accepted. Whenever two or more candidates have filed for the position of precinct committee officer for the same party in the same precinct, the contest for that position must be presented to absentee voters from that precinct by either including the contest on the regular absentee ballot or a separate absentee ballot. The ballot must provide space designated for writing in the name of additional candidates.

(2) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each replacement ballot provided under this subsection.

(3) A copy of the state voters' pamphlet must be sent to registered voters temporarily outside the state, out-of-state voters, overseas voters, and service voters along with the absentee ballot if such a pamphlet has been prepared for the primary or election and is available to the county auditor at the time of mailing. The county auditor shall mail all absentee ballots and related material to voters outside the territorial limits of the United States and the District of Columbia under 39 U.S.C. 3406.

NEW SECTION. Sec. 135. A new section is added to chapter 29A.40 RCW to read as follows:

The county auditor shall send each absentee voter a ballot, a security envelope in which to seal

the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany an absentee ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The larger return envelope must contain a declaration by the absentee voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. For out-of-state voters, overseas voters, and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward absentee ballots, he or she must include with the

ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed.

NEW SECTION. Sec. 136. A new section is added to chapter 29A.44 RCW to read as follows:

A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter.

NEW SECTION. Sec. 137. A new section is added to chapter 29A.44 RCW to read as follows:

On signing the precinct list of registered voters or being issued a ballot, the voter shall, without leaving the polling place or disability access

location, proceed to one of the voting booths or voting devices to cast his or her vote. When county election procedures so provide, the election officers may tear off and retain the numbered stub from the ballot before delivering it to the voter. If an election officer has not already done so, when the voter has finished, he or she shall either (1) remove the numbered stub from the ballot, place the ballot in the ballot box, and return the number to the election officers, or (2) deliver the entire ballot to the election officers, who shall remove the numbered stub from the ballot and place the ballot in the ballot box. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter shall also return unvoted party ballots to the precinct election officers, who shall void the unvoted party ballots and return them to the county auditor. If poll-site ballot counting devices are used, the voter shall put the ballot in the device.

NEW SECTION. Sec. 138. A new section is added to chapter 29A.44 RCW to read as follows:

As each voter casts his or her vote, the precinct election officers shall insert in the poll books or precinct list of registered voters opposite that voter's name, a notation to credit the voter with having participated in that primary or election. No record may be made of a voter's party affiliation in a partisan primary. The precinct election officers shall record the voter's name so that a separate record is kept.

NEW SECTION. Sec. 139. A new section is added to chapter 29A.52 RCW to read as follows:

Major political party candidates for all partisan elected offices, except for president and vice president, precinct committee officer, and offices exempted from the primary under section 172 of this act, must be nominated at primaries held under this chapter.

NEW SECTION. Sec. 140. A new section is added to chapter 29A.52 RCW to read as follows:

It is the intent of the legislature to create a primary for all partisan elected offices, except for president and vice president, precinct committee officer, and offices exempted from the primary under section 172 of this act, that:

(1) Allows each voter to participate;

(2) Preserves the privacy of each voter's party affiliation;

(3) Rejects mandatory voter registration by political party;

(4) Protects ballot access for all candidates, including minor political party and independent candidates;

(5) Maintains a candidate's right to self-identify with any major political party; and

(6) Upholds a political party's First Amendment right of association.

NEW SECTION. Sec. 141. A new section is added to chapter 29A.52 RCW to read as follows:

Instructions for voting a consolidated ballot or a physically separate ballot, whichever is applicable, must appear, at the very least, in:

(1) Any primary voters' pamphlet prepared by the secretary of state or a local government if a partisan office will appear on the ballot;

(2) Instructions that accompany any partisan primary ballot;

(3) Any notice of a partisan primary published in compliance with section 145 of this act;

(4) A sample ballot prepared by a county auditor under section 131 of this act for a partisan primary;

(5) The web site of the office of the secretary of state and any existing web site of a county auditor's office; and

(6) Every polling place.

NEW SECTION. Sec. 142. A new section is added to chapter 29A.52 RCW to read as follows:

(1) Under a consolidated ballot format:

(a) Votes for a major political party candidate will only be tabulated and reported if cast by voters who choose to affiliate with that same major political party;

(b) Votes cast for a major political party candidate by a voter who chooses to affiliate with a different major political party may not be tabulated or reported;

(c) Votes cast for a major political party candidate by a voter who fails to select a major political party affiliation may not be tabulated or reported;

(d) Votes cast for a major political party candidate by a voter who selects more than one major political party with which to affiliate may not be tabulated or reported; and

(e) Votes properly cast may not be affected by votes improperly cast for other races.

(2) Under a physically separate ballot format:

(a) Only one party ballot and one nonpartisan ballot may be voted;

(b) If more than one party ballot is voted, none of the ballots will be tabulated or reported;

(c) A voter's affiliation with a major political party will be inferred from the act of voting the party ballot for that major political party; and

(d) Every eligible registered voter may vote a nonpartisan ballot.

NEW SECTION. Sec. 143. A new section is added to chapter 29A.52 RCW to read as follows:

So far as applicable, the provisions of this title relating to conducting general elections govern the conduct of primaries.

NEW SECTION. Sec. 144. A new section is added to chapter 29A.52 RCW to read as follows:

Nothing in this chapter may be construed to mean that a voter may cast more than one vote for candidates for a given office.

NEW SECTION. Sec. 145. A new section is added to chapter 29A.52 RCW to read as follows:

Not more than ten nor less than three days before the primary the county auditor shall publish notice of such primary in one or more newspapers of general circulation within the county. The notice must contain the proper party designations, the names and addresses of all persons who have filed a declaration of candidacy to be voted upon at that primary, instructions for voting the applicable ballot, as provided in chapter 29A.36 RCW, the hours during which the polls will be open, and the polling places for each precinct, giving the address of each polling place. The names of all candidates for nonpartisan offices must be published separately with designation of the offices for which they are candidates but without party designation. This is the only notice required for the holding of any primary.

NEW SECTION. Sec. 146. A new section is added to chapter 29A.52 RCW to read as follows:

No later than the day following the certification of the returns of any primary, the secretary of state shall certify to the appropriate county auditors the names of all persons nominated for offices at a primary, or at an independent candidate or minor party convention.

NEW SECTION. Sec. 147. A new section is added to chapter 29A.60 RCW to read as follows:

(1) For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by section 117 of this act and such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. For a partisan

primary in a jurisdiction using the physically separate ballot format, a voter may write in on a party ballot only the names of write-in candidates who affiliate with that major political party. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to section 117 of this act is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office, position, or political party shall be accepted if the canvassing board can determine, to their satisfaction, the voter's intent.

(2) The number of write-in votes cast for each office must be recorded and reported with the canvass for the election.

(3) Write-in votes cast for an individual candidate for an office need not be tallied if the total number of write-in votes and under votes recorded by the vote tabulation system for the office is not greater than the number of votes cast for the candidate apparently nominated or elected, and the write-in votes could not have altered the outcome of the primary or election. In the case of write-in votes for statewide office or for any office whose jurisdiction encompasses more than one county, write-in votes for an individual candidate must be tallied whenever the county auditor is notified by either the office of the secretary of state or another auditor in a multicounty jurisdiction that it appears that the write-in votes could alter the outcome of the primary or election.

(4) In the case of statewide offices or jurisdictions that encompass more than one county, if the total number of write-in votes and under votes recorded by the vote tabulation system for an office within a county is greater than the number of votes cast for a candidate apparently nominated or elected in a primary or election, the auditor shall tally all write-in votes for individual candidates for that office and notify the office of the secretary of state and the auditors of the other counties within the jurisdiction, that the write-in votes for individual candidates should be tallied.

NEW SECTION. Sec. 148. A new section is added to chapter 29A.80 RCW to read as follows:

Any member of a major political party who is a registered voter in the precinct may upon payment of a fee of one dollar file his or her declaration of candidacy as prescribed under section 158 of this act with the county auditor for the office of precinct committee officer of his or her party in that precinct. When elected at the primary, the precinct committee officer shall serve so long as the committee officer remains an eligible voter in that precinct.

NEW SECTION. Sec. 149. A new section is added to chapter 29A.80 RCW to read as follows:

The statutory requirements for filing as a candidate at the primaries apply to candidates for precinct committee officer. The office must be voted upon at the primaries, and the names of all candidates must appear under the proper party and office designations on the ballot for the primary for each even-numbered year, and the one receiving the highest number of votes will be declared elected.

However, to be declared elected, a candidate must receive at least ten percent of the number of votes cast for the candidate of the candidate's party receiving the greatest number of votes in the precinct. The term of office of precinct committee officer is two years, commencing the first day of December following the primary.

NEW SECTION. Sec. 150. A new section is added to chapter 29A.80 RCW to read as follows:

Within forty-five days after the statewide general election in even-numbered years, the county chair of each major political party shall call separate meetings of all elected precinct committee officers in each legislative district for the purpose of electing a legislative district chair in such district. The district chair shall hold office until the next legislative district reorganizational meeting two years later, or until a successor is elected.

The legislative district chair may be removed only by the majority vote of the elected precinct committee officers in the chair's district.

NEW SECTION. Sec. 151. A new section is added to chapter 29A.04 RCW to read as follows:

The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall

assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

(1) The maintenance of voter registration records;

(2) The preparation, maintenance, distribution, review, and filing of precinct maps;

(3) Standards for the design, layout, and production of ballots;

(4) The examination and testing of voting systems for certification;

(5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;

(6) Standards and procedures for the acceptance testing of voting systems by counties;

(7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;

(8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;

(9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;

(10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;

(11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted at the polls or at a counting center;

(12) The use of substitute devices or means of voting when a voting device at the polling place is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;

(13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;

(14) The acceptance and filing of documents via electronic facsimile;

(15) Voter registration applications and records;

(16) The use of voter registration information in the conduct of elections;

(17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;

(18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;

(19) Procedures to receive and distribute voter registration applications by mail;

(20) Procedures for a voter to change his or her voter registration address within a county by telephone;

(21) Procedures for a voter to change the name under which he or she is registered to vote;

(22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;

(23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;

(24) Procedures and forms for declarations of candidacy;

(25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;

(26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;

(27) Filing for office;

(28) The order of positions and offices on a ballot;

(29) Sample ballots;

(30) Independent evaluations of voting systems;

(31) The testing, approval, and certification of voting systems;

(32) The testing of vote tallying software programming;

(33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots;

(34) Standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;

(35) Uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections;

(36) Standards and procedures to accommodate out-of-state voters, overseas voters, and service voters;

(37) The tabulation of paper ballots before the close of the polls;

(38) The accessibility of polling places and registration facilities that are accessible to elderly and disabled persons;

(39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;

(40) Procedures for conducting a statutory recount;

(41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;

(42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;

(43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;

(44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;

(45) Procedures for the publication of a state voters' pamphlet;

(46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;

(47) Procedures for conducting partisan primary elections;

(48) Standards and procedures for the proper conduct of voting during the early voting period to provide accessability for the blind or visually impaired;

(49) Standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters;

(50) All data formats for transferring voter registration data on electronic or machine-readable media for the purpose of administering the statewide voter registration list required by the Help America Vote Act (P.L. 107-252);

(51) Defining the interaction of electronic voter registration election management systems employed by each county auditor to maintain a local copy of each county's portion of the official state list of registered voters;

(52) Provisions and procedures to implement the state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252); and

(53) Facilitating the payment of local government grants to local government election officers or vendors.

NEW SECTION. Sec. 152. A new section is added to chapter 29A.04 RCW to read as follows:

"Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls.

NEW SECTION. Sec. 153. A new section is added to chapter 29A.20 RCW to read as follows:

(1) A person filing a declaration of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a

charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office shall not appear on a ballot for that office unless, except as provided in RCW 3.46.067 and 3.50.057, the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(4) The requirements of voter registration and residence within the geographic area of a district do not apply to candidates for congressional office. Qualifications for the United States congress are specified in the United States Constitution.

NEW SECTION. Sec. 154. A new section is added to chapter 29A.20 RCW to read as follows:

A certificate evidencing nominations made at a convention must:

(1) Be in writing;

(2) Contain the name of each person nominated, his or her residence, and the office for which he or she is named, and if the nomination is for the offices of president and vice president of the United States, a sworn statement from both nominees giving their consent to the nomination;

(3) Identify the minor political party or the independent candidate on whose behalf the convention was held;

(4) Be verified by the oath of the presiding officer and secretary;

(5) Be accompanied by a nominating petition or petitions bearing the signatures and addresses of registered voters equal in number to that required by section 111 of this act;

(6) Contain proof of publication of the notice of calling the convention; and

(7) Be submitted to the appropriate filing officer not later than one week following the adjournment of the convention at which the nominations were made. If the nominations are made only for offices whose jurisdiction is entirely within one county, the certificate and nominating petitions must be filed with the county auditor. If a minor party or independent candidate convention nominates any candidates for offices whose jurisdiction encompasses more than one county, all nominating petitions and the convention certificates must be filed with the secretary of state.

NEW SECTION. Sec. 155. A new section is added to chapter 29A.20 RCW to read as follows:

(1) If two or more valid certificates of nomination are filed purporting to nominate different candidates for the same position using the same party name, the filing officer must give effect to both certificates. If conflicting claims to the party name are not resolved either by mutual agreement or by a judicial determination of the right to the name, the candidates must be treated as independent candidates. Disputes over the right to the name must not be permitted to delay the printing of either ballots or a voters' pamphlet. Other candidates nominated by the same conventions may continue to use the partisan affiliation unless a court of competent jurisdiction directs otherwise.

(2) A person affected may petition the superior court of the county in which the filing officer is located for a judicial determination of the right to the name of a minor political party, either before or after documents are filed with the filing officer. The court shall resolve the conflict between competing claims to the use of the same party name according to the following principles: (a) The prior established public use of the name during previous elections by a party composed of or led by the same individuals or individuals in documented succession; (b) prior established public use of the name earlier in the same election cycle; (c) the nomination of a more complete slate of candidates for a number of offices or in a number of different regions of the state; (d) documented affiliation with a national or statewide party organization with an established use of the name; (e) the first date of filing of a certificate of nomination; and (f) such other indicia of an established right to use of the name as the court may

deem relevant. If more than one filing officer is involved, and one of them is the secretary of state, the petition must be filed in the superior court for Thurston county. Upon resolving the conflict between competing claims, the court may also address any ballot designation for the candidate who does not prevail.

NEW SECTION. Sec. 156. A new section is added to chapter 29A.20 RCW to read as follows:

A minor political party or independent candidate convention nominating candidates for the offices of president and vice president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of the persons selected and shall be verified by the presiding officer of the convention.

NEW SECTION. Sec. 157. A new section is added to chapter 29A.20 RCW to read as follows:

Upon the receipt of the certificate of nomination, the officer with whom it is filed shall check the certificate and canvass the signatures on the accompanying nominating petitions to determine if the requirements of section 111 of this act have been met. Once the determination has been made, the filing officer shall notify the presiding officer of the convention and any other persons requesting the notification, of his or her decision regarding the sufficiency of the certificate or the nominating petitions. Any appeal regarding the filing officer's determination must be filed with the superior court of the county in which the certificate or petitions

were filed not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying.

NEW SECTION. Sec. 158. A new section is added to chapter 29A.24 RCW to read as follows:

A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) A place for the candidate to indicate a party designation, if applicable;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under section 160 of this act;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in section 160 of this act.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process.

NEW SECTION. Sec. 159. A new section is added to chapter 29A.24 RCW to read as follows:

Any candidate may mail his or her declaration of candidacy for an office to the filing officer. Such declarations of candidacy shall be processed by the filing officer in the following manner:

(1) Any declaration received by the filing officer by mail before the tenth business day immediately preceding the first day for candidates to file for office shall be returned to the candidate submitting it, together with a notification that the declaration of candidacy was received too early to be processed. The candidate shall then be permitted to resubmit his or her declaration of candidacy during the filing period.

(2) Any properly executed declaration of candidacy received by mail on or after the tenth business day immediately preceding the first day for candidates to file for office and before the close of business on the last day of the filing period shall be included with filings made in person during the filing period. In partisan and judicial elections the filing officer shall determine by lot the order in which the names of those candidates shall appear upon sample and absentee primary ballots.

(3) Any declaration of candidacy received by the filing officer after the close of business on the last day for candidates to file for office shall be rejected and returned to the candidate attempting to file it.

NEW SECTION. Sec. 160. A new section is added to chapter 29A.24 RCW to read as follows:

A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a nominating petition. The petition shall contain not less than a number of

signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury.

NEW SECTION. Sec. 161. A new section is added to chapter 29A.24 RCW to read as follows:

Nominating petitions may be rejected for the following reasons:

(1) The petition is not in the proper form;

(2) The petition clearly bears insufficient signatures;

(3) The petition is not accompanied by a declaration of candidacy;

(4) The time within which the petition and the declaration of candidacy could have been filed has expired.

If the petition is accepted, the officer with whom it is filed shall canvass the signatures contained on it and shall reject the signatures of those persons who are not registered voters and the signatures of those persons who are not registered to

vote within the jurisdiction of the office for which the nominating petition is filed. He or she shall additionally reject any signature that appears on the nominating petitions of two or more candidates for the same office and shall also reject, each time it appears, the name of any person who signs the same petition more than once.

If the officer with whom the petition is filed refuses to accept the petition or refuses to certify the petition as bearing sufficient valid signatures, the person filing the petition may appeal that action to the superior court. The application for judicial review shall take precedence over other cases and matters and shall be speedily heard and determined.

NEW SECTION. Sec. 162. A new section is added to chapter 29A.24 RCW to read as follows:

A void in candidacy for a nonpartisan office occurs when an election for such office, except for the short term, has been scheduled and no valid declaration of candidacy has been filed for the position or all persons filing such valid declarations of candidacy have died or been disqualified.

NEW SECTION. Sec. 163. A new section is added to chapter 29A.24 RCW to read as follows:

The election officer with whom declarations of candidacy are filed shall give notice of a void in candidacy for a nonpartisan office, by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law. The notice shall state the office, and the time and place for filing declarations of candidacy.

NEW SECTION. Sec. 164. A new section is added to chapter 29A.24 RCW to read as follows:

Filings to fill a void in candidacy for nonpartisan office must be made in the same manner and with the same official as required during the regular filing period for such office, except that nominating signature petitions that may be required of candidates filing for certain district offices during the normal filing period may not be required of candidates filing during the special three-day filing period.

NEW SECTION. Sec. 165. A new section is added to chapter 29A.24 RCW to read as follows:

Filings for a nonpartisan office shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law whenever before the sixth Tuesday prior to a primary:

(1) A void in candidacy occurs;

(2) A vacancy occurs in any nonpartisan office leaving an unexpired term to be filled by an election for which filings have not been held; or

(3) A nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified.

Candidacies validly filed within said three-day period shall appear on the ballot as if made during the earlier filing period.

NEW SECTION. Sec. 166. A new section is added to chapter 29A.24 RCW to read as follows:

Filings for a nonpartisan office (other than judge of the supreme court or superintendent of public instruction) shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law, when:

(1) A void in candidacy for such nonpartisan office occurs on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election; or

(2) A nominee for judge of the superior court eligible after a contested primary for a certificate of election by Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified within the ten day period immediately following the last day allotted for a candidate to withdraw; or

(3) A vacancy occurs in any nonpartisan office on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election leaving an unexpired term to be filled by an election for which filings have not been held.

The candidate receiving a plurality of the votes cast for that office in the general election shall be deemed elected.

NEW SECTION. Sec. 167. A new section is added to chapter 29A.24 RCW to read as follows:

A scheduled election shall be lapsed, the office deemed stricken from the ballot, no purported write-in votes counted, and no candidate certified as elected, when:

(1) In an election for judge of the supreme court or superintendent of public instruction, a void in candidacy occurs on or after the sixth Tuesday prior to a primary, public filings and the primary being an indispensable phase of the election process for such offices;

(2) Except as otherwise specified in section 166 of this act, a nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution dies or is disqualified on or after the sixth Tuesday prior to a primary;

(3) In other elections for nonpartisan office a void in candidacy occurs or a vacancy occurs involving an unexpired term to be filled on or after the sixth Tuesday prior to an election.

NEW SECTION. Sec. 168. A new section is added to chapter 29A.32 RCW to read as follows:

(1) The maximum number of words for statements submitted by candidates is as follows: State representative, one hundred words; state senator, judge of the superior court, judge of the court of appeals, justice of the supreme court, and all state offices voted upon throughout the state, except that of governor, two hundred words; president and

vice president, United States senator, United States representative, and governor, three hundred words.

(2) Arguments written by committees under RCW 29A.32.060 may not exceed two hundred fifty words in length.

(3) Rebuttal arguments written by committees may not exceed seventy-five words in length.

(4) The secretary of state shall allocate space in the pamphlet based on the number of candidates or nominees for each office.

NEW SECTION. Sec. 169. A new section is added to chapter 29A.36 RCW to read as follows:

(1) Except as provided to the contrary in RCW 82.14.036, 82.46.021, or 82.80.090, the ballot title of any referendum filed on an enactment or portion of an enactment of a local government and any other question submitted to the voters of a local government consists of three elements: (a) An identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; and (c) a question. The ballot title must conform with the requirements and be displayed substantially as provided under RCW 29A.72.050, except that the concise description must not exceed seventy-five words. If the local governmental unit is a city or a town, the concise statement shall be prepared by the city or town attorney. If the local governmental unit is a county, the concise statement shall be prepared by the prosecuting attorney of the county. If the unit is a unit of local government other than a city, town, or county, the concise statement shall be prepared by

the prosecuting attorney of the county within which the majority area of the unit is located.

(2) A referendum measure on the enactment of a unit of local government shall be advertised in the manner provided for nominees for elective office.

(3) Subsection (1) of this section does not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition.

NEW SECTION. Sec. 170. A new section is added to chapter 29A.36 RCW to read as follows:

(1) Except as provided in RCW 29A.36.180 and in subsection (2) of this section, on the ballot at the general election for a nonpartisan office for which a primary was held, only the names of the candidate who received the greatest number of votes and the candidate who received the next greatest number of votes for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted, no candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary. On the ballot at the general election for any other nonpartisan office for which no primary was held, the names of the candidates shall be listed in the order determined under section 130 of this act.

(2) On the ballot at the general election for the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, judge of the district court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office

or position, only the name of that candidate may be printed under the title of the office for that position.

NEW SECTION. Sec. 171. A new section is added to chapter 29A.36 RCW to read as follows:

The names of the persons certified as nominees by the secretary of state or the county canvassing board shall be printed on the ballot at 15 the ensuing election.

No name of any candidate whose nomination at a primary is required by law shall be placed upon the ballot at a general or special election unless it appears upon the certificate of either (1) the secretary of state, or (2) the county canvassing board, or (3) a minor party convention or the state or county central committee of a major political party to fill a vacancy on its ticket under section 192 of this act.

Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, a candidate's name shall not appear more than once upon a ballot for a position regularly nominated or elected at the same election.

NEW SECTION. Sec. 172. A new section is added to chapter 29A.52 RCW to read as follows:

Whenever it shall be necessary to hold a special election in an odd-numbered year to fill an unexpired term of any office which is scheduled to be voted upon for a full term in an even-numbered year, no September primary election shall be held in the odd-numbered year if, after the last day allowed for candidates to withdraw, either of the following circumstances exist:

(1) No more than one candidate of each qualified political party has filed a declaration of candidacy for the same partisan office to be filled; or

(2) No more than two candidates have filed a declaration of candidacy for a single nonpartisan office to be filled.

In either event, the officer with whom the declarations of candidacy were filed shall immediately notify all candidates concerned and the names of the candidates that would have been printed upon the September primary ballot, but for the provisions of this section, shall be printed as nominees for the positions sought upon the November general election ballot.

NEW SECTION. Sec. 173. A new section is added to chapter 29A.52 RCW to read as follows:

Candidates for the following offices shall be nominated at partisan primaries held pursuant to the provisions of this chapter:

(1) Congressional offices;

(2) All state offices except (a) judicial offices and (b) the office of superintendent of public instruction;

(3) All county offices except (a) judicial offices and (b) those offices where a county home rule charter provides otherwise.

NEW SECTION. Sec. 174. A new section is added to chapter 29A.52 RCW to read as follows:

The offices of superintendent of public instruction, justice of the supreme court, judge of the court of appeals, judge of the superior court, and

judge of the district court shall be nonpartisan and the candidates therefor shall be nominated and elected as such.

All city, town, and special purpose district elective offices shall be nonpartisan and the candidates therefor shall be nominated and elected as such.

NEW SECTION. Sec. 175. A new section is added to chapter 29A.52 RCW to read as follows:

Except as provided in RCW 29A.32.260, notice for any state, county, district, or municipal election, whether special or general, must be given by at least one publication not more than ten nor less than three days before the election by the county auditor or the officer conducting the election as the case may be, in one or more newspapers of general circulation within the county. The legal notice must contain the title of each office under the proper party designation, the names and addresses of all officers who have been nominated for an office to be voted upon at that election, together with the ballot titles of all measures, the hours during which the polls will be open, and the polling places for each precinct, giving the address of each polling place. The names of all candidates for nonpartisan offices must be published separately with designation of the offices for which they are candidates but without party designation. This is the only notice required for a state, county, district, or municipal general or special election and supersedes the provisions of any and all other statutes, whether general or special in nature, having different requirements for the giving of notice of any general or special elections.

NEW SECTION. Sec. 176. A new section is added to chapter 29A.60 RCW to read as follows:

(1) If the requisite number of any federal, state, county, city, or district offices have not been nominated in a primary by reason of two or more persons having an equal and requisite number of votes for being placed on the general election ballot, the official empowered by state law to certify candidates for the general election ballot shall give notice to the several persons so having the equal and requisite number of votes to attend at the appropriate office at the time designated by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared nominated and placed on the general election ballot.

(2) If the requisite number of any federal, state, county, city, district, or precinct officers have not been elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the official empowered by state law to issue the original certificate of election shall give notice to the several persons so having the highest and equal number of votes to attend at the appropriate office at the time to be appointed by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared duly elected, and the official shall make out and deliver to the person thus duly declared elected a certificate of election.

NEW SECTION. Sec. 177. A new section is added to chapter 29A.64 RCW to read as follows:

An officer of a political party or any person for whom votes were cast in a primary who was not

declared nominated may file a written application for a recount of the votes or a portion of the votes cast at that primary for all persons for whom votes were cast for nomination to that office.

An officer of a political party or any person for whom votes were cast at any election may file a written application for a recount of the votes or a portion of the votes cast at that election for all candidates for election to that office.

Any group of five or more registered voters may file a written application for a recount of the votes or a portion of the votes cast upon any question or issue. They shall designate one of the members of the group as chair and shall indicate the voting residence of each member of the group.

An application for a recount of the votes cast for an office or on a ballot measure must be filed with the officer with whom filings are made for the jurisdiction.

An application for a recount must specify whether the recount will be done manually or by the vote tally system. A recount done by the vote tally system must use programming that recounts and reports only the office or ballot measure in question. The county shall also provide for a test of the logic and accuracy of that program.

An application for a recount must be filed within three business days after the county canvassing board or secretary of state has declared the official results of the primary or election for the office or issue for which the recount is requested.

This chapter applies to the recounting of votes cast by paper ballots and to the recounting of votes recorded on ballots counted by a vote tally system.

NEW SECTION. Sec. 178. A new section is added to chapter 29A.64 RCW to read as follows:

(1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position the declaration of candidacy for which was filed with the secretary of state, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b) If the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29A.64.030, and

sections 179 and 180 of this act. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system.

NEW SECTION. Sec. 179. A new section is added to chapter 29A.64 RCW to read as follows:

(1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives.

Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The

canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

(3) The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process.

NEW SECTION. Sec. 180. A new section is added to chapter 29A.64 RCW to read as follows:

Upon completion of the canvass of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts must be transmitted to the same officers who received the abstract on which the recount was based.

If the nomination, election, or issue for which the recount was conducted was submitted only to the voters of a county, the canvassing board shall file the

amended abstract with the original results of that election or primary.

If the nomination, election, or issue for which a recount was conducted was submitted to the voters of more than one county, the secretary of state shall canvass the amended abstracts and shall file an amended abstract with the original results of that election. An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election.

NEW SECTION. Sec. 181. A new section is added to chapter 29A.64 RCW to read as follows:

The canvassing board shall determine the expenses for conducting a recount of votes.

The cost of the recount shall be deducted from the amount deposited by the applicant for the recount at the time of filing the request for the recount, and the balance shall be returned to the applicant. If the costs of the recount exceed the deposit, the applicant shall pay the difference. No charges may be deducted by the canvassing board from the deposit for a recount if the recount changes the result of the nomination or election for which the recount was ordered.

NEW SECTION. Sec. 182. A new section is added to chapter 29A.68 RCW to read as follows:

Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful

act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

(1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or

(2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or

(3) The name of any person has been or is about to be wrongfully placed upon the ballots; or

(4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or

(5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or

(6) An error or omission has occurred or is about to occur in the issuance of a certificate of election.

An affidavit of an elector under subsections (1) and (3) above when relating to a primary election must be filed with the appropriate court no later than the second Friday following the closing of the filing period for nominations for such office and shall be heard and finally disposed of by the court not

later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the issuance of a certificate of election.

NEW SECTION. Sec. 183. A new section is added to chapter 29A.80 RCW to read as follows:

(1) Each political party organization may:

(a) Make its own rules and regulations; and

(b) Perform all functions inherent in such an organization.

(2) Only major political parties may designate candidates to appear on the state primary ballot as provided in section 191 of this act.

NEW SECTION. Sec. 184. A new section is added to chapter 29A.84 RCW to read as follows:

The following apply to persons signing nominating petitions prescribed by section 114 of this act:

(1) A person who signs a petition with any other than his or her name shall be guilty of a misdemeanor.

(2) A person shall be guilty of a misdemeanor if the person knowingly: Signs more than one petition for any single candidacy of any single

candidate; signs the petition when he or she is not a legal voter; or makes a false statement as to his or her residence.

NEW SECTION. Sec. 185. A new section is added to chapter 29A.84 RCW to read as follows:

Every person who:

(1) Knowingly provides false information on his or her declaration of candidacy or petition of nomination; or

(2) Conceals or fraudulently defaces or destroys a certificate that has been filed with an elections officer under chapter 29A.20 RCW or a declaration of candidacy or petition of nomination that has been filed with an elections officer, or any part of such a certificate, declaration, or petition, is guilty of a class C felony punishable under RCW 9A.20.021.

NEW SECTION. Sec. 186. A new section is added to chapter 29A.84 RCW to read as follows:

Every person who:

(1) Knowingly and falsely issues a certificate of nomination or election; or

(2) Knowingly provides false information on a certificate which must be filed with an elections officer under chapter 29A.20 RCW, is guilty of a class C felony punishable under RCW 9A.20.021.

NEW SECTION. Sec. 187. A new section is added to chapter 29A.04 RCW to read as follows:

"September primary" means the primary election held in September to nominate candidates to be voted for at the ensuing election.

NEW SECTION. Sec. 188 A new section is added to chapter 29A.20 RCW to read as follows:

A "convention" for the purposes of this chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. As used in this chapter, the term "election jurisdiction" shall mean the state or any political subdivision or jurisdiction of the state from which partisan officials are elected. This term shall include county commissioner districts or council districts for members of a county legislative authority, counties for county officials who are nominated and elected on a county-wide basis, legislative districts for members of the legislature, congressional districts for members of Congress, and the state for president and vice president, members of the United States senate, and state officials who are elected on a statewide basis.

NEW SECTION. Sec. 189. A new section is added to chapter 29A.20 RCW to read as follows:

Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention.

NEW SECTION. Sec. 190. A new section is added to chapter 29A.24 RCW to read as follows:

If after both the normal filing period and special three day filing period as provided by sections 165 and 166 of this act have passed, no candidate has filed for any single city, town, or district position to be filled, the election for such position shall be deemed lapsed, the office deemed stricken from the ballot and no write-in votes counted. In such instance, the incumbent occupying such position shall remain in office and continue to serve until a successor is elected at the next election when such positions are voted upon.

NEW SECTION. Sec. 191. A new section is added to chapter 29A.28 RCW to read as follows:

If a place on the ticket of a major political party is vacant because no person has filed for nomination as the candidate of that major political party, after the last day allowed for candidates to withdraw as provided by section 115 of this act, and if the vacancy is for a state or county office to be voted on solely by the electors of a single county, the county central committee of the major political party may select and certify a candidate to fill the vacancy. If the vacancy is for any other office the state central committee of the major political party may select and certify a candidate to fill the vacancy. The certificate must set forth the cause of the vacancy, the name of the person nominated, the office for which the person is nominated, and other pertinent information required in an ordinary certificate of nomination and be filed in the proper office no later than the first Friday after the last day allowed for candidates to

withdraw, together with the candidate's fee applicable to that office and a declaration of candidacy.

NEW SECTION. Sec. 192. A new section is added to chapter 29A.28 RCW to read as follows:

A vacancy caused by the death or disqualification of any candidate or nominee of a major or minor political party may be filled at any time up to and including the day prior to the election for that position. For state partisan offices in any political subdivision voted on solely by electors of a single county, an individual shall be appointed to fill such vacancy by the county central committee in the case of a major political party or by the state central committee or comparable governing body in the case of a minor political party. For other partisan offices, including federal or statewide offices, an individual shall be appointed to fill such vacancy by the state central committee or comparable governing body of the appropriate political party.

If the vacancy occurs no later than the sixth Tuesday prior to the state primary or general election concerned and the ballots have been printed, it shall be mandatory that they be corrected by the appropriate election officers. In making such correction, it shall not be necessary to reprint complete ballots if any other less expensive technique can be used and the resulting correction is reasonably clear.

If the vacancy occurs after the sixth Tuesday prior to the state primary or general election and time does not exist in which to correct ballots (including absentee ballots), either in total or in part,

then the votes cast or recorded for the person who has died or become disqualified shall be counted for the person who has been named to fill such vacancy.

When the secretary of state is the person with whom the appointment by the major or minor political party is filed, the secretary shall, in certifying candidates or nominations to the various county officers insert the name of the person appointed to fill a vacancy.

If the secretary of state has already sent forth the certificate when the appointment to fill a vacancy is filed, the secretary shall forthwith certify to the county auditors of the proper counties the name and place of residence of the person appointed to fill a vacancy, the office for which the person is a candidate or nominee, the party the person represents, and all other pertinent facts pertaining to the vacancy.

NEW SECTION. Sec. 193. The following acts or parts of acts are each repealed:

(1) RCW 29A.04.007 (Ballot and related terms) and 2003 c 111 s 102, 1994 c 57 s 2, 1990 c 59 s 2, & 1977 ex.s. c 361 s 1;

(2) RCW 29A.04.085 (Major political party) and section 3 of this act, 2003 c 111 s 115, 1977 ex.s. c 329 s 9, & 1965 c 9 s 29.01.090;

(3) RCW 29A.04.127 (Primary) and section 5 of this act & 2003 c 111 s 122;

(4) RCW 29A.04.215 (County auditor--Duties--Exceptions) and 2003 c 111 s 134, 1987 c 295 s 1, 1977 ex.s. c 361 s 2, 1971 ex.s. c 202 s 1, 1965 c 123 s 1, & 1965 c 9 s 29.04.020;

(5) RCW 29A.04.310 (Primaries) and section 6 of this act, 2003 c 111 s 143, 1977 ex.s. c 361 s 29, 1965 ex.s. c 103 s 6, & 1965 c 9 s 29.13.070;

(6) RCW 29A.04.320 (State and local general elections—Statewide general election--Exceptions--Special county elections) and 2003 c 111 s 144, 1994 c 142 s 1, 1992 c 37 s 1, 1989 c 4 s 9 (Initiative Measure No. 99), 1980 c 3 s 1, 1975-'76 2nd ex.s. c 111 s 1, 1975-'76 2nd ex.s. c 3 s 1, 1973 2nd ex.s. c 36 s 1, 1973 c 4 s 1, 1965 c 123 s 2, & 1965 c 9 s 29.13.010;

(7) RCW 29A.04.610 (Rules by secretary of state) and 2003 c 111 s 161, 1971 ex.s. c 202 s 2, & 1965 c 9 s 29.04.080;

(8) RCW 29A.12.100 (Requirements of tallying systems for approval) and 2003 c 111 s 310;

(9) RCW 29A.20.020 (Qualifications for filing, appearance on ballot) and section 7 of this act, 2004 c (Senate Bill No. 6417) s 11, 2003 c 111 s 502, 1999 c 298 s 9, 1993 c 317 s 10, & 1991 c 178 s 1;

(10) RCW 29A.20.120 (Nomination by convention or write-in--Dates--Special filing period) and section 8 of this act & 2003 c 111 s 506;

(11) RCW 29A.20.140 (Convention--Requirements for validity) and section 9 of this act & 2003 c 111 s 508;

(12) RCW 29A.20.150 (Nominating petition--Requirements) and section 10 of this act & 2003 c 111 s 509;

(13) RCW 29A.20.160 (Certificate of nomination--Requisites) and section 11 of this act,

2003 c 111 s 510, 1989 c 215 s 4, 1977 ex.s. c 329 s 4, & 1965 c 9 s 29.24.040;

(14) RCW 29A.20.170 (Multiple certificates of nomination) and section 12 of this act & 2003 c 111 s 511;

(15) RCW 29A.20.180 (Presidential electors--Selection at convention) and section 13 of this act & 2003 c 111 s 512;

(16) RCW 29A.20.190 (Certificate of nomination—Checking signatures--Appeal of determination) and section 14 of this act & 2003 c 111 s 513;

(17) RCW 29A.24.030 (Declaration of candidacy) and section 15 of this act, 2003 c 111 s 603, 2002 c 140 s 1, & 1990 c 59 s 82.

(18) RCW 29A.24.080 (Declaration--Filing by mail) and section 17 of this act & 2003 c 111 s 608;

(19) RCW 29A.24.090 (Declaration--Fees and petitions) and section 18 of this act & 2003 c 111 s 609;

(20) RCW 29A.24.100 (Nominating petition--Form) and section 19 of this act, 2003 c 111 s 610, & 1984 c 142 s 5;

(21) RCW 29A.24.110 (Petitions--Rejection--Acceptance, canvass of signatures--Judicial review) and section 20 of this act & 2003 c 111 s 611;

(22) RCW 29A.24.130 (Withdrawal of candidacy) and 2003 c 111 s 613;

(23) RCW 29A.24.140 (Void in candidacy--Exception) and section 21 of this act & 2003 c 111 s 614;

(24) RCW 29A.24.150 (Notice of void in candidacy) and section 22 of this act & 2003 c 111 s 615;

(25) RCW 29A.24.160 (Filings to fill void in candidacy--How made) and section 23 of this act, 2003 c 111 s 616, & 1972 ex.s. c 61 s 6;

(26) RCW 29A.24.170 (Reopening of filing--Before sixth Tuesday before primary) and section 24 of this act & 2003 c 111 s 617;

(27) RCW 29A.24.180 (Reopening of filing--After sixth Tuesday before primary) and section 25 of this act & 2003 c 111 s 618;

(28) RCW 29A.24.190 (Scheduled election lapses, when) and section 26 of this act, 2003 c 111 s 619, 2002 c 108 s 1, 1975-'76 2nd ex.s. c 120 s 12, & 1972 ex.s. c 61 s 4;

(29) RCW 29A.24.310 (Write-in voting--Candidates, declaration) and section 27 of this act, 2003 c 111 s 622, 1999 c 157 s 1, 1995 c 158 s 1, 1990 c 59 s 100, & 1988 c 181 s 1;

(30) RCW 29A.28.040 (Congress--Special election) and section 29 of this act, 2003 c 111 s 704, 1990 c 59 s 105, 1985 c 45 s 4, 1973 2nd ex.s. c 36 s 3, & 1965 c 9 s 29.68.080;

(31) RCW 29A.28.060 (Congress--General, primary election laws to apply--Time deadlines, modifications) and section 30 of this act, 2003 c 111 s 706, 1985 c 45 s 7, & 1965 c 9 s 29.68.130;

(32) RCW 29A.28.070 (Precinct committee officer) and 2003 c 111 s 707;

(33) RCW 29A.32.030 (Contents) and section 31 of this act & 2003 c 111 s 803;

(34) RCW 29A.32.120 (Candidates' statements--Length) and section 32 of this act, 2004 c (Senate Bill No. 6417) s 12, 2003 c 254 s 6, 2003 c 111 s 812, & 1999 c 260 s 11;

(35) RCW 29A.32.240 (Contents) and 2003 c 111 s 816 & 1984 c 106 s 6;

(36) RCW 29A.36.010 (Certifying primary candidates) and section 33 of this act & 2003 c 111 s 901;

(37) RCW 29A.36.070 (Local measures--Ballot title--Formulation--Advertising) and section 34 of this act & 2003 c 111 s 907;

(38) RCW 29A.36.100 (Names on primary ballot) and section 35 of this act, 2003 c 111 s 910, & 1990 c 59 s 93;

(39) RCW 29A.36.110 (Uniformity, arrangement, contents required) and 2003 c 111 s 911;

(40) RCW 29A.36.120 (Order of offices and issues--Party indication) and 2003 c 111 s 912;

(41) RCW 29A.36.130 (Order of candidates on ballots) and 2003 c 111 s 913;

(42) RCW 29A.36.140 (Primaries--Rotating names of candidates) and 2003 c 111 s 914;

(43) RCW 29A.36.150 (Sample ballots) and 2003 c 111 s 915;

(44) RCW 29A.36.160 (Arrangement of instructions, measures, offices--Order of candidates--Numbering of ballots) and 2003 c 111 s 916, 1990 c 59 s 13, 1986 c 167 s 11, 1982 c 121 s 1, & 1977 ex.s. c 361 s 60;

(45) RCW 29A.36.170 (Nonpartisan candidates qualified for general election) and section 36 of this act, 2004 c ... (Senate Bill No. 6518) s 1, & 2003 c 111 s 917;

(46) RCW 29A.36.200 (Names qualified to appear on election ballot) and section 37 of this act & 2003 c 111 s 920;

(47) RCW 29A.40.060 (Issuance of ballot and other materials) and 2003 c 111 s 1006, 2001 c 241 s 6, & 1991 c 81 s 31;

(48) RCW 29A.40.090 (Envelopes and instructions) and 2003 c 111 s 1009;

(49) RCW 29A.44.200 (Issuing ballot to voter--Challenge) and 2003 c 111 s 1119, 1990 c 59 s 40, & 1965 c 9 s 29.51.050;

(50) RCW 29A.44.220 (Casting vote) and 2003 c 111 s 1121, 1990 c 59 s 43, 1988 c 181 s 4, 1965 ex.s. c 101 s 15, & 1965 c 9 s 29.51.100;

(51) RCW 29A.44.230 (Record of participation) and 2003 c 111 s 1122;

(52) RCW 29A.52.010 (Elections to fill unexpired term--No primary, when) and section 38 of this act & 2003 c 111 s 1301;

(53) RCW 29A.52.110 (Application of chapter) and section 39 of this act & 2003 c 111 s 1302;

(54) RCW 29A.52.120 (General election laws govern primaries) and 2003 c 111 s 1303;

(55) RCW 29A.52.230 (Nonpartisan offices specified) and section 41 of this act & 2003 c 111 s 1307;

(56) RCW 29A.52.310 (Notice of primary) and 2003 c 111 s 1309 & 1965 c 9 s 29.27.030;

(57) RCW 29A.52.320 (Certification of nominees) and section 42 of this act & 2003 c 111 s 1310;

(58) RCW 29A.52.350 (Election--Certification of measures) and section 43 of this act, 2003 c 111 s 1313, 1999 c 4 s 1, 1984 c 106 s 12, 1980 c 35 s 8, & 1965 c 9 s 29.27.080;

(59) RCW 29A.60.020 (Write-in voting--Declaration of candidacy--Counting of vote) and section 44 of this act & 2003 c 111 s 1502;

(60) RCW 29A.60.220 (Tie in primary or final election) and section 45 of this act, 2003 c 111 s 1522, & 1965 c 9 s 29.62.080;

(61) RCW 29A.64.010 (Application--Requirements--Application of chapter) and section 46 of this act, 2003 c 111 s 1601, 2001 c 225 s 3, 1987 c 54 s 3, 1977 ex.s. c 361 s 98, & 1965 c 9 s 29.64.010;

(62) RCW 29A.64.020 (Mandatory) and section 47 of this act & 2003 c 111 s 1602;

(63) RCW 29A.64.040 (Procedure--Observers--Request to stop) and section 48 of this act & 2003 c 111 s 1604;

(64) RCW 29A.64.060 (Amended abstracts) and section 49 of this act & 2003 c 111 s 1606;

(65) RCW 29A.64.080 (Expenses--Charges) and section 50 of this act & 2003 c 111 s 1608;

(66) RCW 29A.68.010 (Prevention and correction of election frauds and errors) and section 51 of this act & 2003 c 111 s 1701;

(67) RCW 29A.80.010 (Authority--Generally) and section 52 of this act, 2003 c 111 s 2001, 1977 ex.s. c 329 s 16, & 1965 c 9 s 29.42.010;

(68) RCW 29A.80.040 (Precinct committee officer, eligibility) and 2003 c 111 s 2004;

(69) RCW 29A.80.050 (Precinct committee officer--Election--Declaration of candidacy, fee--Term) and 2003 c 111 s 2005, 1991 c 363 s 34, 1987 c 295 s 14, 1973 c 4 s 7, 1967 ex.s. c 32 s 2, 1965 ex.s. c 103 s 3, & 1965 c 9 s 29.42.050;

(70) RCW 29A.80.060 (Legislative district chair--Election--Term--Removal) and 2003 c 111 s 2006, 1991 c 363 s 35, 1987 c 295 s 15, & 1967 ex.s. c 32 s 1;

(71) RCW 29A.84.260 (Petitions--Improperly signing) and section 53 of this act & 2003 c 111 s 2114;

(72) RCW 29A.84.310 (Candidacy declarations, nominating petitions) and section 54 of this act & 2003 c 111 s 2117;

(73) RCW 29A.84.710 (Documents regarding nomination, election, candidacy--Frauds and falsehoods) and section 55 of this act, 2003 c 111 s 2137, 1991 c 81 s 8, & 1965 c 9 s 29.85.100;

(74) Section 1 of this act;

(75) Section 2 of this act;

(76) Section 4 of this act;

(77) Section 28 of this act; and

(78) Section 40 of this act.

PART 3 - MISCELLANEOUS PROVISIONS

***NEW SECTION.** Sec. 201. Sections 102 through 193 of this act take effect the June 1st following the secretary of state issuing a notification that no qualifying primary may be held in this state.

*Sec. 201 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 202. The code reviser shall correct any internal references accordingly if sections 102 through 193 of this act take effect.

NEW SECTION. Sec. 203. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 204. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 205. Except for sections 102 through 193 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 10, 2004.

Passed by the House March 8, 2004.

Approved by the Governor April 1, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1 through 57, section 101 and section 201, Engrossed Senate Bill No. 6453 entitled:

"AN ACT Relating to a qualifying primary;"

This bill would create a so-called "modified blanket primary" in which each candidate would self-designate a political party of that candidate's choosing to appear with his or her name on the ballot, each voter could vote for any candidate listed on the resulting ballot, and the top two candidates receiving the most votes would advance to the general election with their political party self-designation. The bill would also provide as an alternative the "open primary/private choice" system, where voters choose among candidates of one political party in the primary, and where those choices are private.

At the outset, I must reiterate my extreme frustration and disappointment with the State Republican and Democratic parties for challenging the constitutionality of our blanket primary. The blanket primary has served our state well for almost seventy years. Nonetheless, as a result of the parties' action, the United States Court of Appeals for the Ninth Circuit has ruled that the blanket primary

violates the First Amendment rights of the political parties, and the Supreme Court of the United States has chosen to let that decision stand as law. As Governor, I must respect both the letter and the spirit of the federal courts' rulings while ensuring that the state of Washington has an effective and constitutional replacement to the invalidated blanket primary in time for the September 14, 2004 primary election. As demonstrated by their actions and reflected in their deliberations, I know the Legislature and Secretary of State share my goal of ensuring we have a viable replacement for the blanket primary in time for the 2004 primary election.

The Legislature, in passing ESB 6453, knowingly forwarded to me two alternatives to the blanket primary system. Both alternatives are less than ideal, but for the reasons set forth below I am choosing the open primary/private choice system, which I believe better preserves voter choice in the general election, provides more certainty with regard to the state's authority to conduct the primary election, and presents less likelihood that our state's new primary system will be challenged in, or delayed or rewritten by, the federal courts.

During the legislative session, I consistently raised concerns about the "modified blanket primary," which would advance to the general election only the two candidates, regardless of party, who receive the most votes in the primary. I believe this option would frustrate many voters' expectations by removing from the general election the ability to choose from a list of candidates representing a broad political spectrum. The level of participation is almost twice

as high in the general election than in the primary. In 1996, 1,043,000 more citizens participated in the general election than in the primary. In 2000, 1,197,000 more citizens participated in the general election than in the primary. In 2002, a year with no statewide races on the ballot other than judicial elections, 700,000 more citizens participated in the general election than in the primary. The scope of these voters' disenfranchisement in the general election would be enormous if they were forced to select from a ballot with no candidate representing either their preferred party or their general political views.

The modified blanket primary would also hurt the ability of minority and independent candidates to engage the electorate by effectively denying them access to the general election ballot. In 2000, for example, no fewer than eight political parties were represented on the general election ballot for statewide and legislative races, not including independent candidates. Minority parties bring diverse perspectives to political debate and additional choice to voters. They should not be foreclosed from meaningful participation in the democratic process.

Moreover, I believe that adoption of the modified blanket primary would almost certainly result in major parties nominating their candidates through caucuses and embroiling the state in lengthy litigation over the use of party labels by candidates who have not been nominated according to party rules. The legislation as passed acknowledges doubts about the constitutionality of the modified blanket primary system by providing that if a court finds

that candidates cannot use party labels unless nominated by the parties, then the state shall move to an open primary/private choice system, similar to that used in Montana. However, for a variety of reasons, including a requirement that all appeals be exhausted before this alternative may go into effect, the provision for triggering that contingency is fundamentally flawed.

Finally, there is a distinct likelihood that the political parties would promptly block the modified blanket primary in federal court. This year, next year, and until final judicial resolution, we would have a primary system written and imposed by the federal courts, and which does not respect our voters' desire for privacy. Our state deserves to have in place immediately a system that is one of the two alternative primary systems written and enacted by the Washington Legislature – not one written and imposed by the federal courts at the urging of the major political parties.

Because of these concerns, I am persuaded that the open primary/private choice alternative in the bill presented to me by the Legislature is the better -- and more legally viable -- alternative, and the one that we should implement without delay. Under this option, candidates qualify for the general election through a process in which voters are not required to register with a party, but choose among candidates of a single party, with their choice of ballot neither public information nor a public record. I believe this alternative protects voter privacy, offers voter choice consistent with the federal court ruling, and provides county auditors with a system that can be administered without undue complexity.

Section 205 expresses the intent of the Legislature that the adoption of a new primary system is necessary for the immediate preservation of the public peace, health, or safety, and the support of the state government and its existing public institutions; that enactment should take effect immediately, and that the new system should not be subject to being put on hold by referendum. I wholeheartedly concur. The integrity and smooth operation of our electoral processes are at the core of our democratic form of government. Indeed, men and women in uniform risk their lives daily to protect our democracy, and the public institutions that support that democracy.

Many public officials and concerned citizens have suggested that if no new primary system were put in place this legislative session, confusion as to election processes would occur in the fall. The Secretary of State has suggested that he would cancel the primary if a replacement law was not enacted or if the law was suspended because of referral to the general election ballot. In the September 2000 primary, more than 1.3 million voters expressed their preference as to which candidate should represent each party in the general election. With open seats for Governor, Attorney General and Congress, the primary election to determine which candidates appear on the general election ballot will likely draw even more voters. No elected official has any intention of creating a risk that more than a million voters will be denied the opportunity to have a public primary to determine the general election candidates. To the contrary, everyone involved in the legislative process for this bill has recognized the urgency of having a constitutional primary system in

place for the September 14, 2004 primary, and the emergency nature of this legislation. Moreover, I am aware that county auditors need to know by early summer the laws they must implement so that they can prepare for the primary election this September. For these reasons, I agree with the Legislature that this bill should go into effect immediately and not be subject to being put on hold by referendum.

The emergency declaration in section 205 applies in these circumstances to the entire bill as I have signed it into law. Any other reading would thwart the manifest purpose of the Legislature and lead to an absurd result. Obviously, the reference to sections 102 through 193 was intended only to apply if the bill signed into law had multiple inconsistent primary systems. With my veto actions, however, this is not the case.

Some have urged me to veto section 205 to remove what they see as an ambiguous reference to sections 102 through 193, but doing so might create an unintended but more significant ambiguity with respect to whether an emergency need for a primary system exists. I have not done that because, as all of us involved in the legislative process for this bill recognize, assuring that the primary system established by this bill takes effect for the upcoming September 14, 2004 primary is of utmost urgency to the public and democratic self-governance in our state.

Accordingly, I have left section 205 in the bill because the existing text and the circumstances in which this bill was enacted make it clear beyond reasonable dispute that the intent of all concerned

was to have this bill's new primary system in place for the voters this September without risk of cancellation of this bill's primary due to any hold or delays caused by referendum.

For these reasons, I have vetoed sections 1 through 57, section 101 and section 201 of Engrossed Senate Bill No. 6453.

With the exception of sections 1 through 57, section 101, and section 201, Engrossed Senate Bill No. 6453 is approved."

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EXHIBIT C

LOGO	RULE MAKING ORDER	CR-103 (June 2004) (Implements RCW 34.05.360
Agency: Secretary of State		☐ Permanent Rule ☒ Emergency Rule
Effective date of rule: Permanent Rules ☐ 31 days after filing ☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)		Effective date of rule: Emergency Rules ☒ Immediate upon filing. ☐ Later (specify) _____
Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule? ☐Yes ☒No If Yes, explain:		
Purpose: Implementation of a new top-two primary system pursuant to chapter 2, Laws of 2005.		
Citation of existing rules affected by this order: Repealed: 434-262-005 and 434-230-210 Amended: 434-208-060, 434-215-012, 434-215-070, 434-230-010, 434-230-040, 434-230-050, 424-230-060, 434-230-170, 434-261-020, 434-262-160 and 434-381-120 Suspended:		
Statutory authority for adoption: chapter 2, Laws of 2005; RCW 29A.04.611		
Other authority:		
PERMANENT RULE ONLY (Including Expedited Rule Making) Adopted under notice filed as WSR _____ on _____ (date) Describe any changes other than editing from proposed to adopted version: If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost benefit analysis is available by contacting:		

Name: Address:	phone ( )_____ fax ( )_____ e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for finding:

Initiative 872 created a new primary election system, known as the top-two primary. Initiative 872 passed in November 2005; chapter 2, Laws of 2005. The top-two primary conflicts with the nominating primary still described in statute. Because the Secretary of State is legally obligated to implement the new law, and because implementing legislation did not pass during the 2005 legislative session, the Secretary of State must implement the new primary through emergency rule making. The standard rule making process will not allow the rules to take effect until September 2005, after the election cycle has begun.

Date adopted: May 18, 2005	CODE REVISOR USE ONLY MAY 18 2005
NAME (TYPE OR PRINT) Steve Excell	
SIGNATURE /s/	
TITLE Assistant Secretary of State	

(COMPLETE REVERSE SIDE)

Note: If any category is left blank, it will be calculated as zero.
No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New ___	Amended ___	Repealed ___
Federal rules or standards:	New ___	Amended ___	Repealed ___
Recently enacted state statutes:	New 4	Amended 9	Repealed ___

The number of sections adopted at the request of a nongovernmental entity:

New ___ Amended ___ Repealed ___

The number of sections adopted in the agency's own initiative:

New ___ Amended 2 Repealed 2

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New ___ Amended ___ Repealed ___

The number of sections adopted using:

Negotiated rule making	New ___	Amended ___	Repealed ___
Pilot rule making:	New ___	Amended ___	Repealed ___
Other alternative rule making:	New ___	Amended ___	Repealed ___

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-208-060 Filing of electronic facsimile documents. In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic facsimile transmissions of the following documents:

(1) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(2) Any minor party or independent candidate filing material *for president and vice-president of the United States,* except nominating petitions;

(3) Lists of presidential electors selected by political parties or independent candidates;

(4) Voted ballots, provided the voter agrees to waive the secrecy of his or her ballot;

(5) Resolutions from cities, towns, and other districts calling for a special election; and

(6) ((~~Filling of vacancies on the ticket by a major political party,~~

~~(7)~~)) Voter registration form.

AMENDATORY SECTION (Amending WSR 02-15-156, filed 7/23/02, effective 8/23/02)

WAC 434-215-012 Declaration of candidacy ((~~Offices subject to primary~~)). Declarations of candidacy ((~~for all partisan and nonpartisan offices~~)) filed either in person or by mail shall be in substantially the following form:

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~~((STRICKEN GRAPHIC~~

FILING DATA . . *FOR OFFICE USE ONLY*

Date _____ Fee Paid $_____ File No. _____

Time _____ ☐ AM ☐ PM Paid by (check one) ☐ Check ☐ Cash ☐ Other ☐ Name, Petition Clerk/Cashier Initials _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at
PRINT NAME AS YOU ARE REGISTERED TO VOTE

2. _____ _____
STREET ADDRESS OR RURAL ROUTE TELEPHONE NUMBER

_____
MAILING ADDRESS – IF DIFFERENT

_____ _____, Washington _____
CITY COUNTY ZIP CODE

and at the time of filing this declaration I am legally qualified to assume office if elected.

3. I declare myself as a candidate for nomination to the office of:

_____
NAME OF OFFICE

_____
CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION

_____ _____
POSITION NUMBER IF APPLICABLE DIRECTOR OR COMMISSIONER CONTACT, IF ANY

4. For the following term of office:
☐ a full term or a full term and a short term, or
☐ an unexpired term

5. This office is:
☐ Nonpartisan, or
☐ Partisan, and I am: ☐ a candidate of the _____ party or an independent candidate nominate pursuant to chapter 29.24. RCW

6. Filing Fee (Check one):
☐ There is no filing fee because the office has no fixed annual salary, or
☐ I am submitting a filing fee of $10 because the fixed annual salary of the office being sought is $1,000 or less, or
☐ I am submitting a filing fee of $_____, an amount equal to 1% of the annual salary or
☐ I am without sufficient assets or income to pay the filing fee required by law and I have attached a nominating petition in lieu of this fee, pursuant to RCW 28.19.050.

7. Please print my name on the ballot exactly as follows: _____
(PLEASE PRINT)

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

Note: Your signature must be personally attested to by either a notary public or by the officer with whom the declaration is filed.

8. Sign Here X _____
SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE

_____
SIGNATURE OF ACKNOWLEDGING OFFICIAL

_____
TITLE OF ACKNOWLEDGING OFFICIAL

Candidate: Return all copies of this declaration to your Elections Dept. Distribution by Elections Dept: White-County; Yellow-PDC; Pink-Candidate

((~~STRICKEN GRAPHIC~~

((~~STRICKEN GRAPHIC~~

FILING DATA . . . *FOR OFFICE USE ONLY*

Date _____ Fee Paid $_____ File No. _____

Paid by (check one)
☐ Check ☐ Other
☐ Cash ☐ Name, Petition Clerk/Cashier Initials _____ Office Code _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

2. _____
(STREET ADDRESS OR RURAL ROUTE WHERE REGISTERED TO VOTE) (CITY) (COUNTY) (ZIP CODE)

_____
(MAILING ADDRESS) (CITY) (COUNTY) (ZIP CODE)

_____
(TELEPHONE NUMBER) (EMAIL ADDRESS)

and at the time of filing this declaration I am legally qualified to assume office if elected.

3. I declare myself as a candidate for nomination to the office of:

_____
(NAME OF OFFICE)

_____
(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

_____ _____
(POSITION NUMBER IF APPLICABLE) (DIRECTOR OR COMMISSIONER CONTACT, IF ANY)

4. For the following term of office:
☐ a full term or a full term and a short term, or
☐ an unexpired term

5. This office is:
☐ Nonpartisan, or
☐ Partisan, and I am: ☐ a candidate of the _____ party or an independent candidate nominate pursuant to chapter 29.24. RCW

6. Filing Fee (Check one):
☐ There is no filing fee because the office has no fixed annual salary, or
☐ I am submitting a filing fee of $10 because the fixed annual salary of the office being sought is $1,000 or less, or
☐ I am submitting a filing fee of $_____, an amount equal to 1% of the annual salary or
☐ I am without sufficient assets or income to pay the filing fee required by law and I have attached a nominating petition in lieu of this fee, pursuant to RCW 28.19.050.

7. Please print my name on the ballot exactly as follows: _____
(PLEASE PRINT)

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

Note: Your signature must be personally attested to by either a notary public or by the officer with whom the declaration is filed.

8. Sign Here X _____
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)

SIGNED OR ATTESTED BEFORE ME ON _____

by _____
(CANDIDATE)

[SEAL OR STAMP]

_____
(SIGNATURE OF NOTARY)

_____
(TITLE)

Candidate: Return all copies of this declaration to your Elections Dept.
Distribution by Elections Dept: White-County; Yellow-PDC; Pink-Candidate

((~~STRICKEN GRAPHIC~~

FILING DATA . . . *FOR OFFICE USE ONLY*

Date _____ Fee Paid $_____ File No. _____ Office Code _____

☐ Check ☐ Debit/Credit
☐ Cash ☐ Filing Fee Petition Clerk/Cashier Initials _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

2. _____
(STREET ADDRESS OR RURAL ROUTE WHERE REGISTERED TO VOTE) (CITY) (COUNTY) (ZIP CODE)

_____
(MAILING ADDRESS) (CITY) (COUNTY) (ZIP CODE)

_____
(TELEPHONE NUMBER) (EMAIL ADDRESS)

and at the time of filing this declaration I am legally qualified to assume office if elected.

3. I declare myself as a candidate for nomination to the office of:

_____
(NAME OF OFFICE)

_____
(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

_____
(POSITION NUMBER IF APPLICABLE) (DIRECTOR OR COMMISSIONER CONTACT, IF ANY)

4. For the following term of office:
☐ a full term or a full term and a short term, or
☐ an unexpired term

5. This office is:
☐ Nonpartisan, or

☐ Partisan, and I am: ☐ my party preference is _____ or
☐ I am an independent candidate

The party preference will be listed on the ballot exactly as provided unless limited spae necessitates abbreviation.

6. Filing Fee (Check one):
☐ There is no filing fee because the office has no fixed annual salary, or
☐ I am submitting a filing fee of $10 because the fixed annual salary of the office being sought is $1,000 or less, or
☐ I am submitting a filing fee of $_____, an amount equal to 1% of the annual salary or
☐ I am without sufficient assets or income to pay the filing fee required by law and I have attached a nominating petition in lieu of this fee, pursuant to RCW 28.19.050.

7. Please print my name on the ballot exactly as follows: _____
(PLEASE PRINT)

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

Note: Your signature must be personally attested to by either a notary public or by the officer with whom the declaration is filed.

8. Sign Here X _____
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)

SIGNED OR ATTESTED BEFORE ME ON _____

by _____
(CANDIDATE)

[SEAL OR STAMP]

_____
(SIGNATURE OF NOTARY)

_____
(TITLE)

Candidate: Return all copies of this declaration to your Elections Dept.

Candidates: Return all copies of this declaration to the filing officer. Distribution by the filing officer: White-County; Yellow-PDC; Pink-Candidate. The form shall measure eight and one-half inches by eleven inches and be printed on paper stick of good quality. The form shall also contain space for recording the date and time of filing and a sequential filing and receipt number. One copy of the form or an electronic file, in a format approved by the secretary of state and acceptable to the public disclosure commission, containing the information on the form of each properly executed and filed declaration and affidavit of candidacy shall be forwarded to the public disclosure commission as required by RCW ((~~29.15.030~~)) 29A.24.070, and one copy of the form or an electronic file containing the information on the form of each properly executed and filed declaration and affidavit of candidacy shall be returned to the candidate.

NEW SECTION

WAC 434-215-013 Filing fee petition. A candidate who lacks sufficient assets or income to pay the filing fee may submit a filing fee petition with the declaration of candidacy. The filing fee petition must meet the requirements of RCW 29A.24.091 and 29A.24.111, must be printed on sheets of uniform color and size, must include a place for each person to sign and print his or her name and voter registration address, and must contain no more than twenty numbered lines. The filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140, followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the filing is made), hereby petition that the name of (candidate's name) be printed on the official primary ballot for the office of (name of office).

NEW SECTION

WAC 434-215-015 Political party preference and independent status. A candidate for partisan office who files a declaration of candidacy properly must appear on the primary election ballot, regardless of the candidate's party preference or independent status, unless the office is not subject to a primary election. Except for the offices of President and Vice-President of the United States, neither endorsement by a political party nor a nominating convention are required in order to file a declaration of candidacy and appear on the primary election ballot. A candidate for partisan office who does not provide a political party preference is deemed to be an independent candidate. An independent candidate or a candidate who lists on the declaration of candidacy a preference for a party that does not qualify as a major political party is not required to hold a convention, file a nominating petition, or file a certificate of nomination, as stated in RCW 29A.20.110 through 29A.20.201. The requirements of RCW 29A.20.110 through 29A.20.201 are limited to candidates for President and Vice-President of the United States.

AMENDATORY SECTION (Amending WSR 02-15-156, filed 7/23/02, effective 8/23/02)

WAC 434-215-070 Definition and standards for systems to file declarations of candidacy

electronically. An electronic system to file declarations of candidacy shall be an online system accessible to candidates on the world wide web that records the information specified in RCW 29.15.010(1) through (4) and WAC 434-215-090. At a minimum, the system shall perform the following functions:

(1) Verify the candidate's voter registration status;

(2) Check the candidate's name against the name returned by electronic transfer of funds process;

(3) Allow the filing officer to verify filings before filing information is made public;

(4) Accept electronic transfer of funds for the payment of filing fees required by RCW 29.15.050, except that a candidate submitting a ((~~nominating~~)) filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically;

(5) Inform, and require the candidate to acknowledge, that submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitution and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29.15.050; and

(6) Inform the candidate that knowingly providing false information on a declaration of candidacy is a class C felony as provided by RCW 29.85.100.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04 effective 8/16/04)

WAC 434-230-010 Official and sample ballots. Sample paper ballots shall be printed in substantially the same form as official ballots, but shall be a different color than the official ballot. Sample ballots for counties using electronic or mechanical voting systems shall be printed in a manner that makes them easily distinguishable from the official ballot. Sample ballots shall be available starting fifteen days prior to an election. Such sample ballots shall be made available through the office of the county auditor and at least one shall be available at all polling places on election day.

((~~Names of the candidates in each office to appear on the primary ballot shall be arranged on the sample ballot in the order provided by RCW 29A.36.120. The names of the candidates in each office to appear on the general election ballot shall be listed on the sample ballot in the order in which their names appear on the official ballot. State measures and local measures shall be in the same order as they appear on the official ballot.~~)) Positions or offices shall be arranged on all official and sample ballots in substantially the following order: State ballot measures, United States president and vice-president, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, county officers, justices of the supreme court, judges of the court of appeals, judges of superior court, and

judges of the district court. For all other jurisdictions, the offices in each jurisdiction shall be grouped together and be in the order of the position numbers assigned to those offices, if any.

The names of candidates and ballot measures shall appear on the sample ballot in the same order as they appear on the official ballot. The names of the candidates shall appear on the primary election ballot in the order determined by lot. The party preference of candidates for partisan office shall have no bearing on the order in which candidates appear on the ballot. The names of the candidates shall appear on the general election ballot according to the number of votes the candidates received in the primary election. The name of the candidate who received the greatest number of votes shall appear first and the name of the candidate who received the second greatest number of votes shall appear second. If no primary was conducted, the names of the candidates shall appear on the general election ballot in the order determined by lot.

At any primary or election when a local voters' pamphlet is published which contains a full sample ballot, a separate sample ballot need not be printed.

Counties with populations of over five hundred thousand may produce more than one sample ballot for a primary or election, each of which lists a portion of the offices and issues to be voted on at that election. Sample ballots may be printed by region or area (e.g., legislative district, municipal, or other district boundary) of the county, provided that all offices and issues to be voted upon at the election appears on at least one of the various sample ballots

printed for such county. Each regional sample ballot shall contain all offices and issues to be voted upon within that region. A given office or issue may appear on more than one sample ballot, provided it is to be voted upon within that region. Sample ballots shall be made available and distribute to each polling place and to other locations within the appropriate region or area.

NEW SECTION

WAC 434-230-035 Special filing periods for voids in candidacy and vacancies in office. Voids in candidacy, as provided in RCW 29A.24.141 through 29A.24.181, may occur for partisan as well as nonpartisan office. A three day special filing period must be opened, as provided in RCW 29A.24.171 and 29A.24.181, whether the office is partisan or nonpartisan.

Vacancies in office, as provided in RCW 29A.24.171, 29A.24.181, and 42.12.040, may be filled through a special three day filing period as provided in RCW 29A.24.171 and 29A.24.181, whether the office is partisan or nonpartisan.

A scheduled election shall lapse when a void in candidacy remains after both a normal filing period and a special three day filing period, or when a vacancy in office occurs involving an unexpired term on or after the sixth Tuesday before the general election.

If the death or disqualification of a candidate for a partisan or nonpartisan office does not give rise to the opening of a new filing period, then the following occurs:

(1) If the candidate dies or becomes disqualified after filing a declaration of candidacy but before the close of the filing period, then the declaration of candidacy is void and his or her name will not appear on the ballot;

(2) If the candidate dies or becomes disqualified after the close of the filing period but before the day of the primary, then his or her name will appear on the primary ballot and all otherwise valid votes for that candidate will be tabulated. The candidate's name will not appear on the general election ballot even if he or she otherwise would have qualified to do so, but no other candidate will advance, or be substituted, in the place of that candidate. If the candidate was the only candidate to qualify to advance to the general election, then the general election for that office lapses, and the office will be regarded as vacant as of the time the newly elected official would have otherwise taken office;

(3) If the candidate dies or becomes disqualified on or after the day of the primary, and he or she would have otherwise qualified to appear on the general election ballot, then his or her name will appear on the general election ballot and all otherwise valid votes for that candidate will be tabulated. If the candidate received a number of votes sufficient to be elected to office, but for his or her death or disqualification, then the office will be regarded as vacant as of the time the newly elected official would have otherwise taken office.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-230-040 Candidate's political party ((~~designation~~)) preference – Primary to general. ((~~No person who has offered himself or herself as a candidate for the nomination of one party at the primary, shall have his or her name printed on the ballot of the succeeding general election as the candidate for another political party.~~)) A candidate for partisan office who indicated a party preference on the declaration of candidacy may not change the party preference between the primary election and the general election.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-230-050 Candidate ((~~nominated by two or more political parties or~~)) eligible for two or more offices. ((~~In the event a candidate, as a result of write-in votes, is the nominee of two or more political parties for the same office, such candidate shall designate in writing, under which political party designation he or she desires to be listed on the ballot. Such written notice shall be submitted to the county auditor within three days of the certification of the primary.~~))

In the event a candidate, as a result of write-in votes in the primary, is ((~~a nominee~~)) eligible to advance to the general election for two or more offices, the candidate shall notify the county auditor within three days of the primary certification, in writing, of the single office for which he or she desires to appear on the general election ballot. Any void in candidacy for other positions thus created will be handled as provided by law.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-230-060 Primary votes required for appearance on general election ballot. Following any ((~~nonpartisan~~)) primary, no candidate's name shall be entitled to appear on the general election ballot unless he or she receives the greatest or the next greatest number of votes for the office and additionally receives at least one percent of the total votes cast for the office.

((~~Following any partisan primary, no political party candidate's name shall be entitled to appear on the general election ballot unless he or she receives a plurality of votes cast for the candidates of his or her party for that office and additionally at least one percent of the total votes cast for the office. An independent candidate must receive one percent of the total votes cast for the office in the primary in order for his or her name to appear on the general election ballot.~~)) The filing officer shall notify, in writing, all candidates who satisfy other requirements but who fail to meet the one percent requirement of the fact that their name will not appear on the general election ballot.

((~~In those charter counties where provision is made in the county charter for the qualification of minor party and independent candidates, the charter provisions shall apply if the candidates has chosen that method for ballot qualification~~.))

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-230-170 ((~~Electronic voting devices~~)) Ballot form. Each office on the ballot shall be identified, along with a statement designating how many candidates are to be voted on for such office (e.g., vote for . . . .with the words, "one," 'two," or a spelled number). The office term shall be included on the ballot if such term is other than a full term (e.g., short/full term, two-year unexpired term, etc.). Each office shall be listed on the ballot in the manner prescribed by law or administrative rule. Following the office designation the names of all candidates for that position shall be listed ((~~together with political party designation certified by the secretary of state as provided in RCW 29A.36.010 or the word "nonpartisan," or "NP" as applicable~~)). If the position is a partisan position, the party preference or independent status of each candidate shall be listed next to the candidate. The party preference must be listed exactly as provided by the candidate on the declaration of candidacy unless limited space on the ballot necessitates abbreviation or the party description provided is, in the opinion of the county auditor, obscene. If the office encompasses more than one county, the county auditor must coordinate the appearance of the ballot with other affected counties to achieve consistency. If the position is a nonpartisan position, the word "nonpartisan" or "NP" shall be listed next to each candidate. Each office listed on the ballot shall be separated by a bold line. In a year in which a President of the United States is to be elected, the name of all candidates for President and Vice-President for each party shall be grouped together. Each group shall be enclosed in brackets

with one vote response position for each party, where the voter may indicate ((~~their~~)) his or her choice.

Candidate names and party preferences shall be printed in a type style and point size which is easily read. If a candidate's name or party preference exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include using a small point size, a different type style, or setting the name in upper/lower case letters, rather than upper case, if appropriate.

For paper ballots, there shall be a box at either the left or right of the name of each candidate where the voter may indicate his or her choice.

Each position, with the candidates running for that office, shall be clearly delineated from the following one by a bold line. Following each listing of candidates shall be a blank space for writing in the name of any candidate, if desired, on the ballot card, or a write-in space provided on the ballot envelope.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-230-210 Paper ballots – Ballot form.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-261-020 Counting center – Political party observers. Counting center operations shall be observed by at least one representative from each major political party, if representatives have been

appointed by the respective political parties and those representatives are present while the counting center is in operation.

Prior to the primary or election, the county auditor shall determine the number of observers required in order to observe all aspects of the counting center proceedings, and shall request, in writing, that each major political party appoint representatives to fill the requirements. Where more than one observer is to be appointed, the political party shall designate one of their observers as supervisor. Counting center observers shall be provided training with respect to ballot processing procedures and the vote tallying system as required by RCW 29A.12.120.

Before final assignment as observers, major political party representatives so appointed shall be reviewed by the county auditor, who may refuse to approve any person so appointed. In the event the auditor rejects a person designated, he or she shall promptly notify the political party concerned and request that a substitute observer be appointed, and shall ensure that the substitute observer is trained ((~~as provided in subsection (2) of this section~~)).

Representatives of the major political parties appointed as observers shall be identified by roster, including assigned observer stations if more than one in the counting center, and by identification tags which will indicate the observer's name and the party represented.

NEW SECTION

WAC 434-262-012 Partisan Primaries. Pursuant to chapter 2, Laws of 2005, a partisan primary does not serve to determine the nominees of a political party but serves to winnow the number of candidates to a final list of two for the general election. The candidate who receives the highest number of votes and the candidate who receives the second highest number of votes at the primary election advance to the general election, regardless of the candidates' political party preference. The candidates also must receive at least one percent of the total votes cast for that office at the primary in order to advance to the general election.

Each voter may vote for any candidate listed on the ballot, regardless of the party preference of the candidates or the voter. Voters at the primary election are not choosing a political party's nominees.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-262-160 Write-in-voting - Voter intent. In all cases of write-in votes the canvassing board shall exercise all reasonable efforts to determine the voter's intent. ((~~Write-in votes are to be counted where abbreviations are used for office, position, or political party.~~)) In a general election, write-in votes are not to be counted for any person who filed for the same office as either a regular or write-in candidate at the preceding primary and failed to qualify for the general election. If a ((~~write-in~~)) declaration of candidacy has been filed pursuant to RCW 29A.24.311, the voter ((~~need only~~)) must write in ((~~that~~)) the candidate's name in order for the

vote to be counted. If no declaration of ((~~write-in~~)) candidacy has been filed, the voter must write in the candidate's name ((~~of the candidate, the political party, if applicable,~~)) and, if the office and/or position number cannot be determined by the location of the write-in on the ballot, the office and position number, in order for the write-in vote to be counted.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-262-005 Authority and purpose.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state:

(a) For candidates who filed during the regular filing period, within three business days after filing their declaration of candidacy;

(b) For candidates who filed during a special filing period, ((~~or were selected by a political party pursuant to either RCW 29A.52.010 or 29S.24.140,~~)) within three business days after the close of the special filing period ((~~or selection by the party~~)).

(2) For ballot measures, including initiatives, referendums, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments and for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than twenty calendar days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than fourteen calendar days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to

the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so.

LOGO	PREPROPOSAL STATEMENT OF INQUIRY	CR-101 (June 2004) (Implements RCW 34.05.360 Do NOT use for expedited rule making

Agency: Office of the Secretary of State, Elections Division

Subject of possible rule making:

Implementation of a new top-two primary election system pursuant to chapter 2, Laws of 2005

Statutes authorizing the agency to adopt rules on this subject: chapter 2, Laws of 2005; RCW 29A.04.611

Reasons why rules on this subject may be needed and what they might accomplish:

Initiative 872 created a new primary election system, known as t he op-two primary. Initiative 872 passed in November 2005: chapter 2, Laws of 2005. The top-two primary conflicts with the nominating primary still described in statute. Because the Secretary of State is legally obligated to implement the new law, and because implementing legislation did not pass during the 2005 legislative session, the Secretary of State must implement the new primary through rule making.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

Process for developing new rule (check all that apply):

- X Negotiated rule making
- ☐ Pilot rule making
- ☐ Agency study
- ☐ Other (describe)

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:
(List names, addresses, telephone, fax numbers, and e-mail of persons to contact; describe meetings, other exchanges of information, etc.)

Katie Blinn
Assistant Director of Elections
P.O. Box 40220
Olympia, WA 98504-0220
(360) 902-4168

DATE
May 18, 2005

NAME (TYPE OR PRINT)
Steve Excell

SIGNATURE
Steve Excell

TITLE
Assistant Secretary of State

CODE REVISER USE ONLY

CODE REVISOR'S OFFICE
STATE OF WASHINGTON
FILED

MAY 18 2005

TIME 9:30 AM
WSR 05-11-100

Supreme Court, U.S.
FILED
MAY 23 2007
OFFICE OF THE CLERK

NOS. 06-730, 06-713

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE GRANGE,

Petitioner,

v.

WASHINGTON STATE REPUBLICAN PARTY, ET AL.,

Respondents.

STATE OF WASHINGTON; ROB MCKENNA, ATTORNEY GENERAL; SAM REED, SECRETARY OF STATE,

Petitioners,

v.

WASHINGTON STATE REPUBLICAN PARTY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX VOLUME III OF III

ROBERT M. MCKENNA
Attorney General
James K. Pharris*
Deputy Solicitor General
**Counsel of Record*

1125 Washington Street SE
Olympia, WA 98504-0100
360-664-3027

Petition For Writ Of Certiorari Filed Nov. 20, 2006
Certiorari Granted Feb. 26, 2007

Thomas Ahearne
Foster Pepper & Shefelman PLLC
1111 3rd Avenue Suite 3400
Seattle, WA 98101-3299
(206) 447-4400
Counsel for Petitioner Washington State Grange

John White*
Kevin Hansen
Livengood Fitzgerald & Alskog
121 3rd Avenue
Kirkland, WA 98083-0908
(425) 822-9281
Counsel for Respondent Washington State Republican Party
Counsel of Record

David McDonald*
Jay Carlson
Alex Wagner
Kirkpatrick & Lockhart Preston Gates Ellis LLP
925 4th Avenue Suite 2900
Seattle, WA 98104-1158
(206) 623-7580
Counsel for Respondent Washington State Democratic Central Committee
Counsel of Record

Richard Shepard
Shepard Law Office PLLC
818 S Yakima Avenue Suite 200
Tacoma, WA 98405-4865
(253) 383-2235
Counsel for Respondent Libertarian Party

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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition For Certiorari of the Washington State Grange, Docket No. 06-710:

Washington State Republican Party v. Washington,
460 F.3d 1108 (9th Cir. 2006) 1a

Washington State Republican Party v. Logan
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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition For Certiorari of the State of Washington, Docket No. 06-713:

Washington State Republican Party v. Washington,
460 F.3d 1108 (9th Cir. 2006) 1a

Washington State Republican Party v. Logan
377 F. Supp. 2d 907 (W.D. Wash. 2005) 35a

Permanent Injunction (7-29-05)..... 93a

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

(No. 05-35774) (Appeal of Washington State Grange)

(No. 05-35780) (Appeal of State of Washington)

(NOTE: The dockets for these two appeals are identical except where noted below)

August 4, 2005 Docketed Cause and Entered Appearances of Counsel

August 4, 2005 Civil Appeals Docketing Statement

August 5, 2005 Case rejected from Circuit Mediation Program

August 9, 2005 Appellant's Notice of Designation of Reporter's Transcript

August 11, 2005 Appellees' Response to Motion to Expedite Review (No. 05-35774 only)

August 11, 2005 Appellants' Notice of Designation of Reporter's Transcript (entire transcript ordered)

August 12, 2005 Appellee State Republican Party's Joinder of Opposition to Motion to Expedite Review (No. 05-35774 only)

August 17, 2005 Appellant Washington State Grange's Reply to Response Supporting Motion to Expedite Appeal (No. 05-35774 only)

August 17, 2005 Appellees' Response Opposing Motion to Expedite Review (No. 05-35774 only)

August 18, 2005 Appellants' Joint Reply Supporting Motion to Expedite Review

August 19, 2005 Order Granting in Part and Denying in Part Motion to Expedite Review

August 25, 2005 Appellee Democratic Central Committee's Motion to Extend Time to File Brief

August 31, 2005 Order Granting Democratic Central Committee's Motion to Extend Time

September 19, 2005 Appellant Washington State Grange Opening Brief filed (No. 05-35774)

September 19, 2005 Appellant State of Washington's Opening Brief filed (No. 05-37580)

October 18, 2005 Appellee Washington State Republican Party Brief filed (No. 05-37580)

October 19, 2005 Appellee Washington State Republican Party Brief filed (No. 05-37574)

October 19, 2005 Appellee Libertarian Party of Washington Brief filed

October 26, 2005 Appellee State Democratic Central Committee Brief filed

October 26, 2005 Amicus FairVote's Motion and Brief filed

October 31, 2005 Appellant Washington State Grange's Response Opposing FairVote's Motion for Amicus Status (No. 05-37574)

October 31, 2005 Appellant State of Washington's Response Opposing FairVote's Motion for Amicus Status

October 31, 2005 Appellee Washington State Republican Party's Response Opposing FairVote's Motion for Amicus Status

November 1, 2005 Appellee Washington State Democratic Committee's Joinder in Appellee Republican Party's Response Opposing FairVote's Motion for Amicus Status

November 7, 2005 FairVote's Reply to Responses

November 8, 2005 Order Consolidating Appeals of Washington State Grange and State of Washington, Granting Appellee Washington State Democratic Party's Motion for Extension of Time, and Referring FairVote's Motion to the Merits Panel

November 8, 2005 Appellee Washington State Democratic Committee's Brief

November 8, 2005 Appellant Washington State Grange's Reply Brief

November 8, 2005 Appellant State of Washington's Reply Brief

December 21, 2005 Argument Calendared for Feb. 6. 2006

January 10, 2006 FairVote's Additional Brief

February 6, 2006 Argued and Submitted to Dorothy W. NELSON, Pamela A. RYMER, and Raymond C. FISHER

August 22, 2006 Order Granting Leave to FairVote to File Amicus Brief

August 22, 2006 Order on Merits Affirming U. S. District Court

September 13, 2006 Mandate Issued and Costs Taxed

October 3, 2006 Agreed Order on Attorneys' Fees

November 27, 2006 Notice from Supreme Court: Washington State Grange Petition for Certiorari Filed on 11/20/06

December 1, 2006 Notice from Supreme Court: State of Washington Petition for Certiorari Filed on 11/20/06

March 1, 2007 Notice from Supreme Court: Petitions for Certiorari Granted on 2/26/07

UNITED DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

(No. 2:05-cv-00927-TSZ)

May 19, 2005 Complaint for Declaratory Judgment and for Injunctive Relief Regarding

Initiative 872 and Primary Elections [Doc. #1]

May 19, 2005 Motion to Intervene by Intervenor Plaintiffs Washington State Democratic Central Committee [Doc. #2]

May 19, 2005 Motion to Intervene by Intervenor Plaintiffs Libertarian Party of Washington State [Doc. #3]

May 26, 2005 Motion for Preliminary Injunction by Plaintiff Washington State Republican Party [Doc. #7]

May 26, 2005 Declaration of John J. White, Jr. re Motion for Preliminary Injunction [Doc. #8]

May 27, 2005 Minute Order by Judge Thomas S. Zilly scheduling status conference [Doc #11]

June 2, 2005 Motion to Intervene of State of Washington, Rob McKenna, and Sam Reed [Doc. #22]

June 2, 2005 Answer of State of Washington Intervenor Defendants [Doc. #23]

June 7, 2005 Complaint of Intervenor Plaintiff Libertarian Party of Washington State [Doc. #28]

June 7, 2005 Order Granting Motion to Intervene of Democratic Central Committee [Doc. #29]

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June 7, 2005 Minute Entry re: Status Conference held on 6/7/05; Granting Motions to Intervene by State of Washington, Democratic Central Committee, Libertarian Party, and Washington State Grange; Adopting Briefing Schedule; Requesting Joint Statement of Issues; Continuing Motion for Preliminary Injunction [Doc. #45]

June 8, 2005 Order Granting Motion to Intervene of Libertarian Party [Doc. #27]

June 8, 2005 Complaint of Intervenor Plaintiff Democratic Central Committee [Doc. #31]

June 8, 2005 Request of Washington State Grange for Entry of Order Granting Intervention [Doc. #33]

June 10, 2005 Answer of Intervenor Defendant Washington State Grange [Doc. #37]

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June 10, 2005 Stipulation Statement of Legal Issues [Doc. #40]

June 14, 2005 Order Regarding Initial Disclosures, Joint Status Report and Early Settlement [Doc. #44]

June 15, 2005 Answer of Defendant Donna M. Eldridge, Jefferson County Auditor [Doc. #47]

June 17, 2005 Motion for Summary Judgment of Plaintiff Washington State Republican Party [Doc. #49]

June 17, 2005 Supplemental Declaration of John J. White, Jr., re Motion for Summary Judgment [Doc. #50]

June 17, 2005 Motion for Summary Judgment of Intervenor Plaintiff Libertarian Party of Washington State [Doc. #52]

June 17, 2005 Supplement re Motion for Summary Judgment of Libertarian Party (correcting e-filing errors) [Doc. #54]

June 17, 2005 Motion for Summary Judgment of Intervenor Plaintiff Washington State Democratic Central Committee [Doc. #55]

June 17, 2005 Declaration of Paul Berendt re Motion for Summary Judgment of Democratic Central Committee [Doc. #56]

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June 23, 2005 Supplement re Motion for Summary Judgment of Washington State Republican Party [Doc. #63]

June 23, 2005 Declaration of Kevin B. Hanson re Motion for Summary Judgment of Washington State Republican Party [Doc. #64]

July 1, 2005 Response by Intervenor Defendant State of Washington to Motions for Summary Judgment [Doc. #65]

July 1, 2005 Declaration of James K. Pharris re Response of State of Washington [Doc. #66]

July 1, 2005 Stipulation and Agreed Order of Substitution and Dismissal [Doc. #67]

July 1, 2005 Declaration of Rod Dembowski re Intervenor Washington State Grange's Response to Motions for Summary Judgment [Doc. #68]

July 1, 2005 Exhibits A-V to Declaration by Washington State Grange in Response to Motions for Summary Judgment [Doc. #69]

July 1, 2005 Response by Intervenor Defendant Washington State Grange to Motions for Summary Judgment [Doc. #70]

July 5, 2005 Errata and Replacement Brief by Washington State Grange [Doc. #72]

July 5, 2005 Supplement to Exhibit G to Declaration of Rod Dembowski by Washington State Grange [Doc. #73]

July 6, 2005 Reply of Intervenor Plaintiff Washington State Democratic Central Committee [Doc. #75]

July 6, 2005 Second Declaration of David T. McDonald filed by Washington State Democratic Committee [Doc. #76]

July 6, 2005 Response by Plaintiff Washington State Republican Party [Doc. #77]

July 6, 2005 Reply of Intervenor Plaintiff Libertarian Party of Washington [Doc. #78]

July 6, 2005 Declaration of Richard Winger filed by Libertarian Party of Washington [Doc. #79]

July 6, 2005 Reply of Plaintiff Washington State Republican Party [Doc. #81]

July 6, 2005 Supplemental Declaration of Kevin B. Hansen filed by Washington State Republican Party [Doc. #82]

July 8, 2005 Answer of Intervenor Defendant State of Washington to Complaint of Libertarian Party of Washington State [Doc. #83]

July 8, 2005 Answer of Intervenor Defendant State of Washington to Complaint of Washington State Democratic Central Committee [Doc. #84]

July 13, 2005 Minute Entry: Oral Argument Held; Court signs stipulation and agree order of substitution and dismissal; hears argument and takes matter under advisement [Doc. #85]

July 13, 2005 Stipulation and Order of Substitution and Dismissal [Doc. #86]

July 15, 2005 Order and Preliminary Injunction by Judge Thomas S. Zilly [Doc. #87]

July 22, 2005 Praecipe to Attach Proposed Order Granting Permanent Injunction [Doc. #88]

July 27, 2005 Objections by State of Washington re Praecipe to Attach Proposed Order [Doc. #90]

July 27, 2005 Objections by Washington State Grange re Praecipe to Attach Proposed Order [Doc. #91]

July 28, 2005 Minute Order by Judge Thomas S. Zilly re Plaintiffs' request to respond to Defendants' Objections [Doc. #92]

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July 29, 2005 Civil Appeals Docketing Statement by Washington State Grange [Doc. #96]

July 29, 2005 Notice of Appeal of State of Washington [Doc. #97]

July 29, 2005 Civil Appeals Docketing Statement by State of Washington [Doc. #98]

August 1, 2005 Transcript of Proceedings filed for 7/13/05 Hearing [Doc. #101]

August 3, 2005 Appeal Notification Packet sent to US Court of Appeals re Washington State Grange Appeal [Doc. #99]

August 4, 2005 Appeal Notification Packet sent to US Court of Appeals re State of Washington Appeal [Doc. #100]

August 5, 2005 (Proposed) Time Schedule Order filed by Washington State Grange [Doc. #101]

August 5, 2005 (Proposed) Time Schedule Order filed by State of Washington [Doc. #102]

August 8, 2005 Notice by Washington State Grange Ordering Entire Transcript [Doc. #104]

August 8, 2005 Letter by John J. White Requesting Status Conference {Doc. #105]

August 10, 2005 Motion for Attorney Fees by Libertarian Party [Doc. #106]

August 12, 2005 Order by Judge Thomas S. Zilly [Doc. #107]

August 22, 2005 Order by US Court of Appeals re Briefing Schedule [Doc. #108]

September 2, 2005 Order by US Court of Appeals Amending Briefing Schedule [Doc. #109]

January 4, 2006 Clerk's Record on Appeal transmitted to US Court of Appeals

April 27, 2006 Agreed Motion to Substitute Parties filed by Washington State Republican Party [Doc. #110]

May 4, 2006 Order Granting Motion to Substitute Parties [Doc. #111]

September 18, 2006 Mandate of US Court of Appeals filed [Doc. #112]

September 18, 2006 Costs Taxed Against State of Washington [Doc. #113]

October 6, 2006 Order of USCA Amending Mandate to Reflect Amended Attorney Fees [Doc. #114]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al., Plaintiff Intervenors LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Plaintiff Intervenors v. DEAL LOGAN, King County Records & Elections division Manager; et al., Defendants, STATE OF WASHINGTON, et al., Defendant Intervenors WASHINGTON STATE GRANGE, Defendant Intervenors.	No. CV05-0927A DECLARATION OF ROD DEMBOWSKI IN SUPPORT OF WASHINGTON STATE GRANGE'S CONSOLIDATED RESPONSE TO THE SUMMARY JUDGMENT/ INJUNCTION MOTIONS *["Grange Documents Dec."]* ***Noted for Oral Argument: 9:00a.m., Wednesday, July 13, 2005***

ROD DEMBOWSKI declares:

1. I am an attorney at Foster Pepper & Shefelman PLLC, and am one of the attorneys in this matter for the defendant intervenor Washington State Grange. As such, I have personal knowledge of

the facts stated in this declaration and am competent to testify about them.

2. Attached as the following Exhibits to this declaration are true and correct copies of the following documents:

Exhibit	*Description*
A	Washington State Republican Party Platform
B	Washington State Libertarian party Issue Summary
C	Washington State Democratic party Platform
D	Selected September 1996 Primary Election Results
E	Selected November 1996 General Election Results
F	Initiative 872 Listing From Washington Secretary of State
G	Declaration of Don Whiting
H	Washington State Initiative Petition Signature Totals
I	2004 Wash. Laws 271 (the "Montana" statute)
J	Election Results for Initiative 872 from Washington Secretary of State
K	Legislative Text of Initiative 872
L	John White Election Law CLE Material Excerpts
M	Secretary of State Emergency WAC Rules Implementing Initiative 872

N	King County Journal Article Regarding King County GOP Convention
O	Washington State Democratic Central Committee Rules for conventions
P	King County Official Call to Nominating Convention
Q	West King County Libertarian party Bylaws
R	Washington State Democratic Central Committee Membership Form
S	Washington State Libertarian Party Membership Form
T	NARAL-Pro Choice Washington Legislator Guide
U	Washington State House of Representatives Republican Caucus Membership Directory
V	Washington State Senate Democratic Caucus Membership Directory

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 1st day of July 2005.

Rod Dembowski

Rod Dembowski

EXHIBIT A

[Republican Party web page header omitted]

WASHINGTON STATE REPUBLICAN PARTY

Chris Vance, Chairman

2004 WASHINGTON STATE REPUBLICAN PARTY PLATFORM

Adopted by the delegates to the 2004 Washington State Republican Convention

Bellevue, WA – May 29, 2004

Platform Committee Chair: Olga Miller
Platform Vice-Chair: Betty Hanes

[internal internet links omitted]

"In all that the people can individually do as well for themselves, government ought not to interfere."

Abraham Lincoln

PREAMBLE

Republicans believe that good government is based on the individual and family, that each person's ability, dignity, freedom and responsibility must be honored and recognized. Our basic freedom, the value that makes our country unique in the world is rooted in Free Enterprise and the basic right to Private Property. The role of Government is to preserve and defend our ability to live in a free and peaceful society.

We reaffirm the words of our founding fathers as written in the Declaration of Independence: "WE hold these Truths to be self evident, that all Men are created equal, that they are endowed by the Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness –

That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

Our Republic was founded as one nation under God on principles clearly set forth in the Declaration of Independence and codified in our Constitution.

PLATFORM

Our Republican vision for Washington State is as follows:

ECONOMIC OPPORTUNITY – Jobs, Growth and Prosperity

Government must practice fiscal responsibility, while individual citizens should enjoy an atmosphere of free enterprise, unfettered by burdensome government regulation. Excessive taxation is a loss of personal freedom. Allowing people to keep more of what they earn allows opportunity and wealth created in the private sector to give hope and relief to those ill-served by government, and gives families and communities the resources to confront wider social problems.

Economic opportunity should include:

- Reducing taxes and fees on businesses and individuals.
- Reducing excessive regulation on businesses in Washington State.
- Examining government regulations to ensure they reflect the intent of the law.
- Enhancing international trade.

- Establishing and maintaining secure, broad based, energy resources within our nation's borders.
- Making the Bush tax cuts permanent.

Labor Unions

We recognize the historical importance of labor unions, and their protection of workers' health and general welfare. Union members should be given flexibility in regards to the political use of their Union dues and informed of their rights with respect to those dues.

NATIONAL DEFENSE/WINNING THE WAR ON TERROR – Superior military strength is vital to our national security

"We will rally the world to this cause by our efforts, by our courage. We will not tire, we will not falter, and we will not fail."
George W. Bush

We believe in a strong and free America, a nation leading the world in the expansion of peace, freedom and human rights. We commend our courageous President, and our armed forces, for all they have done to make us safer since September 11, 2001.

National defense should include:

- Supporting President Bush's doctrine of pre-emptive self defense.
- Preventing the subjugation of the national sovereignty of the U.S. to any foreign or international body.

- Ensuring that US military personnel remain only under U.S. command.
- Continuing the development of the Strategic Defense Initiative.
- Continuing to honor all past and current obligations to our troops and veterans.
- Gaining control of our borders and adopting a firm immigration policy for homeland security.
- Supporting the historical doctrine of pre-emption in US conflicts.

In Defense of Israel . . .

Israel, as a sovereign state, has the right to self-defense against foreign enemies and state sponsored terrorism. The Bush Doctrine clearly includes supporting Israel, which is being targeted by terrorists. For a peaceful, democratic Palestinian state to exist, we must support Israel in winning their war against terror in their homeland.

TRANSPORTATION

Recognizing that resolving the highway congestion is a major economic issue in the State of Washington, we call upon the governor and legislators to solve this as a priority issue.

The Department of Transportation should focus on highways, ferries, county roads, and city streets and minimize need for further increases. This focus will concentrate the efforts of such a refocused "Highway Department" to such a degree as to minimize the need for further tax increases. Conducting a thorough review of how we administer our transportation system will provide greater

economic opportunities for business and value to consumers.

We support:

- Prioritizing highway projects and using public money efficiently to reduce congestion and maintain infrastructure.
- Placing the Department of Transportation in the Governor's Cabinet.
- Subjecting the Department of Transportation and Sound Transit to thorough and continuous independent financial and performance audits.
- No sales tax being levied on materials and labor used on publicly funded transportation projects.
- The gas tax being used only to expand and maintain the state highway system.
- The creation of regional transportation improvement districts for each region's voter approved projects.
- Funding for Sound Transit only by those who live in the Sound Transit district.

ENERGY – Republicans believe in the reduction of our dependence on foreign energy and:

- Support President Bush's Energy Bill to reduce the nation's dependence on foreign crude oil.
- Support drilling for oil on the ANWR reserve.

- Support incentives for the use of renewable fuels.
- Support the development of alternative energy sources.
- Support reducing regulations and costs that may hinder re-licensing of many of our State's dams.
- Support resumption of safe nuclear power plant construction.
- Oppose removal of dams used for hydroelectric, irrigation, and transportation.

RESPONSIBLE STEWARDSHIP – Recognizing the primacy of people and the importance of our Northwest way of life

"We share this common goal: we must foster economic growth in ways that protect our environment. We must encourage growth that will provide a better life for citizens, while protecting the land, the water, and the air that sustains life."
George W. Bush

We can achieve a healthful environment and continued economic growth and prosperity when government works with property owners in a positive cooperative fashion. Property owners implementing environmental practices that are supported by sound, peer-reviewed scientific method are a model of responsible natural resource stewardship:

- Reasonably limit environmental regulations to insure that legislative intent is followed.

- Private timber owners deserve a set of responsible, reliable, and consistent government rules under which to operate.
- Growth management and shoreline rules are best determined at the local level.
- Save our dams by funding improvements in fish passage, improvements in spawning habitat, and ocean survival.
- Support the *Washington State Republican Party Contract with Rural Washington* [October 2003].

HOPE FOR RURAL AND AGRICULTURAL COMMUNITIES – Regulatory and Tax Relief – Living the American Dream

Washington's economy and the health of many of our rural communities is based on farming, fishing, mining, and the timber industry. Natural resource industries are the economic foundation of our economy. By ensuring economic opportunity for America's farmers and family farms of all sizes we will secure our domestic food supply and strengthen the rural economy.

To make our products competitive in the free market and make our farms viable and sustainable, we must:

- Establish a strong and secure domestic food supply that is not dependant on foreign products.
- Competitively price our agricultural products.
- Improve efficiencies in our ports and on our transportation routes.

- Create tax policies that recognize fluctuations in farm income and assist farmers in surviving low-income years.
- Require imported food to meet all U.S. standards.
- Require country of origin labeling for the benefit of American consumers.
- Protect individual (including corporate) water rights and value using water resources in food production.
- Support completion of the Columbia Basin Project.

FAMILY - Families, the cornerstone of free society

The traditional family unit is the cornerstone of our society and it is the primary responsibility of parents to guide and discipline their children. We understand that a primary responsibility of government is to uphold and respect traditional institutions, such as marriage between a man and a woman and family, which are its foundation. Our commitment to protecting the life of innocents from conception through the infirmities of age must be nurtured in both our culture and our laws.

We support:

- The parental right and responsibility to direct the upbringing of their children, and to provide care, discipline and moral training.
- The protection of innocent human life born or pre-born through natural death.

- Existing Washington State Law that defines marriage as a legal union between one man and one woman.
- An amendment to the United States Constitution defining marriage as the union between a man and a woman.

EDUCATION – The key to equal opportunity begins in the classroom

The primary authority and responsibility for educating children resides with parents.

The Federal Government, based on the both Amendment of the U. S. Constitution, may not determine expenditures and curriculum. School boards should be free to determine priorities, focusing on basic academics, teaching of the constitution and civics, history, opportunities for vocation and technical training, and the promotion of traditional American values.

We support:

- Providing the highest quality education through offering a broad selection of choices, whether public, private, charter or home school.
- Appropriate funding of public schools, and tax credits and vouchers for other choices.
- The right of parents to direct the education of their children.
- Education reform through full implementation of No Child Left Behind, giving parents more choices, stronger accountability of schools,

proven teaching methods and more local freedom.

- Teach English as our official and primary language, concentrated English instruction for non-English speaking students and regular instruction in English for all other subjects which will ensure successful job skills in a diverse, but overwhelmingly English speaking population.
- Sex education programs that promote abstinence before marriage.
- A policy that public schools not promote or identify homosexuality as a healthy, morally acceptable, or alternative lifestyle.
- Teaching the Declaration of Independence and the Constitutions of the United States and the State of Washington in our schools.
- Graduation requirements with an emphasis on rigorous academic skills in English, literacy, mathematics and sciences.

CRIME AND JUSTICE - Swift punishment for criminals

The primary role of government is to protect its citizens' freedoms and their property from both foreign and domestic crime. Crime threatens our ability as individuals to exercise our right of self-government, but we accept the risks inherent in a free society. The rule of law is protected by policies that punish, reduce and deter crime.

We support:

[Secretary of State web page header omitted]

WASHINGTON STATE 2004 GENERAL ELECTIONS

MEASURE RESULTS

Measure	Measures Name	Yes (Votes/Percentage)	No (Votes/Percentage)
Initiative Measure 872	Elections for partisan offices	**1,632,255** 59.84%	**1,095,190** 40.15%
Initiative Measure 884	Dedicating funds designated for education purposes	**1,102,996** 40.00%	**1,654,112** 59.99%
Initiative Measure 892	Authorizing additional electronic scratch ticket machines	**1,069,414** 38.45%	**1,711,785** 61.54%
Referendum Measure 55	Charter public schools	**1,112,964** 41.66%	**1,572,203** 58.33%
Initiative Measure 297	Mixed Radioactive and nonradioactive hazardous waste	**1,812,581** 69.09%	**810,795** 30.90%

Initiative Measure 872 – Elections for partisan offices

EXHIBIT J

Washingon Secretary of State

INITIATIVES: TOP 20 – HIGHEST PETITION SIGNATURES SUBMITTED

IP #282	1973	Elected Officials' Salaries	699,098
IP #695	1999	License Tab Fees/Tax Limitations	514,141
IP #602	1993	Spending & Revenue Limits/Tax Repeal	440,160
IP #790	2002	Law Enforcement & Fire Fighters Retirement Systems	345,543
IP #884	2004	Funds for Education Purposes	321,932
IP #330	2004	Claims from Healthcare Services	319,146
IP #872	2004	Elections for Partisan Offices	308,402
IP #729	2000	Charter Schools	306,361
IP #775	2001	Long-term In-home Health Care	304,327
IP #336	2004	Medical Malpractice	300,776
IP #518	1988	Minimum Wage	300,900
IP #732	2000	Teacher Salaries	298,722
IP #728	2000	School Class Sizes	297,199
IP #747	2001	Limiting Property Tax Increases	290,704
IP #593	1993	Mandatory Prison Sentences	290,613
IP #688	1998	Minimum Wage	288,357
IP #200	1997	Discrimination	280,511
IP #297	2003	Hazardous Waste	280,382
IP #559	1991	Property Tax Rollback	276,653
IP #773	2001	Low Income Health Programs	275,081

You can find this information at: http://www.secstate.wa.gov/elections/initiatives/statistics_petitions.aspx

EXHIBIT H

to vote for the candidate they believe is best qualified for public office in election's first stage (the September ballot), while changing the *result* of that September choice to be a straightforward winnowing of the field of all candidates down to the top two for the election's second stage (the November ballot).

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 1st day of July 2005.

Donald F. Whiting

Don Whiting

(1905-1917), the Grange worked on the efforts to adopt the initiative, referendum, recall, voter pamphlets, and the direct primary.

4. The Grange was instrumental in the creation of public utility districts (through Initiative to the Legislature No. 1), rural electrification efforts, protection of water resources (through Initiative to the Legislature No. 59), and efforts to provide universal telephone service. The Grange is now engaged in a technology program to provide public access computers and Internet access to under-served communities in our State.

5. From its inception, the Grange in Washington State has been concerned with government and the role of political parties in the public arena. In one of its commentaries on the proposed state Constitution, the Grange argued that the large number of elective offices would "foster machine politics of the most corrupt and offensive character." In 1922, the Grange helped overturn – by referendum – new legislation which would have required voter registration by party and closed primaries in our State.

6. In 1934, the Grange successfully sponsored Initiative to the Legislature No. 2 – usually referred to as the "blanket" primary – to give individual voters more say in the election of public officials. After the blanket primary was challenged in federal court the Grange filed Initiative to the People No. 872 to establish a replacement top-two election system in our State, a new system that restores the privacy of voters' personal political leanings when they vote in September and restores their free *choice*

1. I am special projects coordinator for the defendant intervenor Washington State Grange, and I have been actively involved with the Grange's activities, including its most recent activities on behalf of the enactment of Initiative 872. As such, I have personal knowledge of the facts stated in this declaration and am competent to testify about them.

1. The Washington State Grange is a fraternal, social, and civic organization chartered by the national Grange in 1889 and composed of around three hundred community and county Granges across our State, some but not all of which are organized under RCW 24.28.010. At the beginning of 2005, there were 20,720 fraternal members in 284 subordinate Granges and 41 county-level Granges and more than 25,000 non-fraternal members throughout the state.

2. The National Grange was born in the midst of the political and economic struggle against the monopoly power of the railroads and the grain storage warehouses during the westward expansion following the Civil War. These issues were also at the center of the formation of the Washington State Grange at the time of statehood. During the campaign for statehood in 1889, the Grange advocated that greater controls should have been placed on railroads than were included in the proposed state Constitution.

3. Over the years, the Washington State Grange has advanced and influenced the debate on many important public issues. In the early years of statehood, the Grange was a consistent advocate for women's suffrage. During the Progressive Era

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al., Plaintiffs, WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al., Plaintiff Intervenors LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Plaintiff Intervenors v. DEAN LOGAN, King County Records & Elections division Manager; et al., Defendants, STATE OF WASHINGTON, et al., Defendant Intervenors WASHINGTON STATE GRANGE, Defendant Intervenors.	No. CV05-0927Z DECLARATION OF DON WHITING IN SUPPORT OF WASHINGTON STATE GRANGE'S CONSOLIDATED RESPONSE *["Whiting Dec."]* ***Noted for Oral Argument: 9:00 a.m., Wednesday, July 13, 2005***

DON WHITING declares:

EXHIBIT G

Assigned Number: 872
Filed: 01/08/2004

Sponsor
Mr Terry Hunt
PO box 1186
Olympia, WA 98507-1186
360-943-9911
360-357-3548
grange@wa-grange.org

Ballot title
Initiative Measure No. 872 concerns elections for partisan offices.

This measure would allow voters to select among all candidates in a primary. Ballots would indicate candidates' party preference. The two candidates receiving most votes advance to the general election, regardless of party.

Ballot Measure Summary
This measure proposes a new system for conducting primaries for partisan offices. The[*] proposal continues current practice of permitting voters to vote for any candidate for office in primary and general elections, without limitation based on party. The two "to[*] candidates with the most votes in the primary advance to the general election. Candidates continue to designate their party. It becomes effective only if the court decision invalidating the traditional blanket primary becomes final.

EXHIBIT F

Commissioner of Public Lands			
Candidate	Party	Votes	Percentage
Jennifer Belcher	D	1098548	52.15%
Bruce Mackey	R	940154	44 63%
Marc Strauch	NP	68011	3.23%

Superintendent of Public Instruction			
Candidate	Party	Votes	Percentage
Teresa "Terry" Bergeson	NP	1260885	63.36%
Ron Taber	NP	729080	36.64%

Insurance Commissioner			
Candidate	Party	Votes	Percentage
Deborah Senn	D	1163832	55.36
Anthony "Tony" Lowe	R	872280	41.49%
Steve Sevick	NLP	66348	3.16%

NOVEMBER 1996 GENERAL

Governor Candidate	Party	Votes	Percentage
Gary Locke	D	1296492	57.96%
Ellen Craswell	R	940538	42.04%

Lt. Governor Candidate	Party	Votes	Percentage
Brad Owen	D	1022878	48.02%
Ann Anderson	R	989661	46.46%
Shawn Newman	EF	78510	3.69%
Art Rathjen	LBP	39277	1.84%

Secretary of State Candidate	Party	Votes	Percentage
Ralph Munro	R	1223769	57.30%
Phyllis Kenney	D	838632	39.27%
Gary Gill	NLP	73229	3.43%

State Treasurer Candidate	Party	Votes	Percentage
Mike Murphy	D	1155498	55.15%
Lucy DeYoung	R	939578	44.85%

State Auditor Candidate	Party	Votes	Percentage
Brian Sonntag	D	1338577	64.17%
Robert B. Keene, Jr.	R	747378	35.83%

Attorney General Candidate	Party	Votes	Percentage
Christine Gregoire	D	1280955	60.04%
Richard Pope	R	756639	35.46%
Richard Shepard	LBP	58672	2.75%
Luanne Coachman	NLP	37320	1.75%